

US EPA ARCHIVE DOCUMENT

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**PENNSYLVANIA LEGAL STATEMENT
FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE
FEDERAL RCRA PROGRAM THROUGH
JUNE 1998**

July 27, 2000

**CONTENTS OF PENNSYLVANIA LEGAL STATEMENT FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE FEDERAL RCRA PROGRAM THROUGH JUNE 1998**

I.	<u>DEFINITION OF TERMS, REFERENCES AND TEST METHODS</u>	4
	definition of terms and a list of publications	4
	40 CFR 260.10 and 260.11	4
	allow petitions for equivalent testing or analytical methods	7
	40 CFR 260.21	7
	Consolidated Checklist C1 - 40 CFR Part 260, Subpart A, plus §§ 260.10, 260.11 and 260.21, as of June 30, 1998 and Commonwealth Analogs.	7
II.	<u>IDENTIFICATION AND LISTING</u>	10
	list of hazardous wastes and characteristics for identifying hazardous waste	10
	40 CFR 261.10 through 261.35 and applicable appendices	10
	define solid and hazardous waste	11
	40 CFR 261.1 through 261.4	11
	exemption from regulations for hazardous waste	13
	40 CFR 260.23, 260.30 through 260.41, and 261.5 through 261.9	13
	delisting hazardous wastes	14
	40 CFR 260.20 and 260.22	14
	Consolidated Checklist C1 - 40 CFR Part 260, §§ 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41	15
	Consolidated Checklist C2 - 40 CFR Part 261,	17
III.	<u>STANDARDS FOR GENERATORS</u>	22
	generators covered by 40 CFR Part 262	22
	40 CFR Part 262	22
	Consolidated Checklist C3 - 40 CFR Part 262	24
IV.	<u>STANDARDS FOR TRANSPORTERS</u>	29
	transporters	29
	40 CFR Part 263	31
	Consolidated Checklist C3 - 40 CFR Part 263	31
V.	<u>STANDARDS FOR FACILITIES</u>	33
	standards for hazardous waste management facilities	34
	40 CFR Parts 264 and 266	34
	interim status standards for hazardous waste management facilities	35
	40 CFR Part 265	36
	Consolidated Checklist C5 - 40 CFR Part 264	43
	Consolidated Checklist C7 - 40 CFR Part 266	69
	Consolidated Checklist C6 - 40 CFR Part 265	74
VI.	<u>LAND DISPOSAL RESTRICTIONS</u>	97
	land disposal of hazardous wastes	98
	40 CFR Part 268	99
	Consolidated Checklist C8 - 40 CFR Part 268	99

**CONTENTS OF PENNSYLVANIA LEGAL STATEMENT FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE FEDERAL RCRA PROGRAM THROUGH JUNE 1998**

(cont'd)

VII.	<u>REQUIREMENTS FOR PERMITS</u>	104
	permit requirements	104
	40 CFR Parts 124 and 270	104
	Consolidated Checklist C9 — 40 CFR Parts 124 and 270	111
VIII.	<u>REQUIREMENTS FOR USED OIL MANAGEMENT</u>	132
	used oil management standards	132
	40 CFR Part 279	132
IX.	<u>DELETED LEGALLY OBSOLETE RULES</u>	132
X.	<u>UNIVERSAL WASTES</u>	133
	universal waste standards	133
	40 CFR Part 273	133
	Consolidated Checklist C11 — 40 CFR Part 273	134
XI.	<u>INSPECTIONS</u>	137
XII.	<u>ENFORCEMENT REMEDIES</u>	139
XIII.	<u>PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS</u>	142
XIV.	<u>AUTHORITY TO SHARE INFORMATION WITH EPA</u>	143
XV.	<u>AUTHORITY OVER INDIAN LANDS</u>	144
XVI.	<u>EXPOSURE ASSESSMENTS</u>	144
XVII.	<u>RADIOACTIVE MIXED WASTES</u>	144
XVIII.	<u>AVAILABILITY OF INFORMATION</u>	145
XIX.	<u>MEMORANDUM OF AGREEMENT (MOA)</u>	145
XX.	<u>CODIFICATION OF REGULATIONS</u>	145

**PENNSYLVANIA
LEGAL STATEMENT
FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE
FEDERAL RCRA PROGRAM
THROUGH JUNE 1998**

I hereby certify, pursuant to my authority as Deputy General Counsel and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, and 40 CFR 271 that in my opinion the laws of the Commonwealth of Pennsylvania provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Pennsylvania Department of Environmental Protection (Department). The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now, as specified below. This certification will remain effective unless modified in writing as a consequence of changes in law or regulations.

The Commonwealth's basic authority for regulating hazardous wastes is found in the Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended (Act 97 or SWMA). Listed below are Commonwealth statutes which have amended Act 97 since Pennsylvania's base program authorization for RCRA was granted in 1986. None of these laws affect the RCRA hazardous waste program, as administered by Pennsylvania. Although most of the statutes are self-explanatory by a brief description, wording from amendments to the Oil and Gas Act (Act 78 of 1992) which clearly eliminates any conflict between the hazardous waste program and that statute is included. Also included is an explanation on how the federal regulations achieve the same goal as the amendments to Act 97 in 1986 regarding coal ash and drill cuttings.

Act 120 of 1986: Appalachian States Low-Level Radioactive Waste Compact Law committing Pennsylvania, Delaware, Maryland and West Virginia to construct a low-level radioactive waste disposal facility as required by federal law.

Act 168 of 1986: Amending the definition of solid waste. This act amended the Solid Waste Management Act by excluding coal ash and drill cuttings from the definition of solid waste. It defines these two materials separately. Coal ash is defined as "fly ash, bottom ash or boiler slag resulting from the combustion of coal that is or has been beneficially used, reused or reclaimed ..." Drill cuttings must be disposed of at the well site and pursuant to the Oil and Gas Act. The amendments give the Department the ability to regulate these materials through the establishment of siting criteria, design and operating standards and certification requirements. The federal requirements, which Pennsylvania has adopted by reference, specifically exclude coal ash and drilling wastes as hazardous wastes (see 40 CFR 261.4(b)(4)-(5)). Therefore, this change to Act 97 does not diminish Pennsylvania's ability to manage the RCRA hazardous waste program.

Act 101 of 1988: Municipal Waste Planning, Recycling and Waste Reduction Act that mandates local recycling programs, county waste plans and strengthens the environmental protection standards for new municipal waste facilities.

Act 55 of 1989: Amending the Solid Waste Management Act to authorize the beneficial use of municipal and residual waste.

Act 109 of 1990: Amending the Solid Waste Management Act dealing with aquaculture, food processing wastes and solid waste transfer stations.

Act 78 of 1992: Amending the Oil and Gas Act to extend the compliance date for bonding pre-1975 wells and creating an Orphan Well Plugging Fund financed by surcharges on new permits.

Section 601.603a. Relationship to solid waste and surface mining

(a) The obligation to obtain a permit and post a bond pursuant to Articles III and V of the ... Solid Waste Management Act, and to provide public notice pursuant to section 1905-A(b)(1)(v) of the act of April 9, 1929 (P.L. 177, No. 175), known as the Administrative Code of 1929, for any pit, impoundment, method or facility employed for the disposal, processing or storage of residual wastes generated by the drilling of an oil or gas well or from the production of such wells which is located on the well site shall be satisfied if the owner or operator of the well meets the following conditions ...

(c) Nothing in this section shall diminish any other duties or obligations that an owner or operator may have under the Solid Waste Management Act. The provisions of this section shall not apply to any waste which is classified as a hazardous waste pursuant to the Solid Waste Management Act, or the Resource Conservation and Recovery Act of 1976.

Act 18 of 1995: Abolishment of the Department of Environmental Resources and the establishment of DCNR and DEP.

The Commonwealth received initial (Base Program) authorization for the State hazardous waste program effective January 30, 1986 (51 FR 1791; January 15, 1986). Since then, the Environmental Quality Board (Board) has adopted several hazardous waste rules. On February 16, 1999, the Board adopted amendments to the Commonwealth's hazardous waste regulations by deleting the current text at Chapters 260 through 267, 269 and 270, and renumbering or adding new hazardous waste regulations in Chapters 260a through 266a, 266b and 268a through 270a. The new Chapters incorporate by reference the Federal hazardous waste regulations in the *Code of Federal Regulations* (CFR) that were in effect as of May 1, 1999. The incorporation by reference also includes subsequent modifications and additions to the CFR incorporated. The Commonwealth's regulations became effective on May 1, 1999. The purpose of incorporating by reference is to ensure that the Commonwealth's hazardous waste regulations are consistent with the Federal regulations. In cases for which the Board has determined that the Commonwealth has a compelling State interest to promulgate regulations that are more stringent than the Federal regulations, the Board has promulgated regulations that are more stringent than the Federal regulations. The Commonwealth's final rulemaking was made under the authority of Act 97, sections 105, 401-403 and 501 (35 P.S. §§ 6018.105, 6018.401-6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P.S. §§ 691.105, 695.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-20).

Pennsylvania has the authority to lawfully adopt regulations that reference EPA (or other) regulations and adopt certain EPA criteria by reference to 40 CFR. Pennsylvania courts have upheld the validity of regulations that reference other existing regulations, including Federal regulations. See East Suburban Press v. Township of Penn Hills, 40 Pa. Cmwlth 438, A.2d 1263 (1979); Commonwealth v.

Tarabilda, 222 Pa. Super. 237, 294 A.2d 830 (1972); Fisher's Petition, 344 Pa. 96, 23 A.2d 878 (1942). Adoption by reference has occurred in water quality, air quality, and safe drinking water regulations approved by this office. (See 25 Pa. Code §§ 92.31, 131.2) The practice is expressly authorized by Section 1937(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1937(a), attached as Appendix 1 hereto, which states that any reference in a statute to a regulation includes all past or subsequent amendments and supplements to that regulation and any new regulation substituted for a former regulation, which were in force at the time of application of the provision of the statute in which such reference was made, unless the context clearly indicates otherwise. The Statutory Construction Act applies to documents codified in the Pennsylvania Code, which includes all regulations. A detailed discussion of the legality of adoption of state regulations which reference Federal regulations is attached as Appendix 2 hereto.

This Legal Statement addresses Pennsylvania's revised hazardous waste program. Because of the major amendments to the Commonwealth's regulations, this current Legal Statement contains the statement and certification for the Commonwealth's provisions analogous to the Federal base program and all revisions to that program through June, 1998 (that is, through RCRA Cluster VIII), except as otherwise noted in the next paragraph. The Commonwealth is also seeking authorization to (1) regulate the radioactive component of radioactive mixed waste (Non-checklist item MW) and (2) make assessment information available to the Agency for Toxic Substances and Disease Registry (Non-checklist item SI). The Commonwealth's regulatory provisions are documented on Consolidated Checklists C1 through C11, which are incorporated into this Legal Statement. On the Consolidated Checklists, an "X" in the "equivalent" column implies that the Commonwealth provision is either identical, or clearly equivalent, to its Federal counterpart. A "D" in this column implies the Commonwealth's provision is written differently, but is equivalent. The Commonwealth's statutory authorities for the hazardous waste management program are documented on the State Legislation Checklist and HSWA Statutory Checklist, herein incorporated by reference.

Pennsylvania's regulations at 25 Pa. Code Chapter 266a, Subchapter E, include provisions for used oil standards that are largely analogous to the Federal standards as introduced by Revision Checklist 19. However, the Commonwealth is not seeking authorization for any of the Federal recycled used oil management standards, including the standards addressed by Revision Checklists 112, 122, 130 and 166 (which have superseded the Revision Checklist 19 provisions).

Revision Checklist 148 addresses procedures for decision making in the hazardous waste permit program covered in 40 CFR 124.31 - 124.33. Although Pennsylvania has an analog for 40 CFR 124.31 at 25 Pa. Code § 270a.83 and an analog for 40 CFR 124.33 at 25 Pa. Code § 270a.84, it does not have an analog to 40 CFR 124.32. Thus, the Commonwealth does not have analogs to all provisions in Revision Checklist 148. Because EPA cannot authorize partial checklists, the Commonwealth is not seeking authorization for Revision Checklist 148 at this time.

In addition, Pennsylvania is not seeking authorization for the following program areas:

- (1) corrective action (Revision Checklists 17L, 44A, 44B, 44C and 121),
- (2) the "Availability of Information" requirements,
- (3) requirements for existing and newly regulated surface impoundments provided in RCRA §3005(j)(1) & (6) (Non-checklist item SR1),

- (4) the variances from surface impoundment requirements provided in RCRA §3005(j)(2)-(9) and (13) (Non-checklist item SR2),
- (5) criminal penalties for used oil fuel requirement violations (Non-checklist item CP), and
- (6) recycled used oil management standards, including the standards addressed by Revision Checklists 112, 122, 130 and 166 (which have superseded the Revision Checklist 19 provisions).

Finally, per EPA guidance, the Commonwealth is not seeking authorization for the final rule addressed by Revision Checklist 165 [Organobromine Production Wastes, 63 FR 24596 (May 4, 1998), as amended June 29, 1998, at 63 FR 35147) and clarified on August 10, 1998 (63 FR 42580)] because of the court vacatur of the rule.

The Commonwealth's Legal Statement supersedes the Legal Statement for Final Authorization certified by the Office of General Counsel on October 4, 1985. However, to the extent that opinions contained in the 1985 Legal Statement are still relevant, the previous language has been incorporated into this Legal Statement.

I. DEFINITION OF TERMS, REFERENCES AND TEST METHODS

A. State statutes and regulations contain definition of terms and a list of publications (as in 40 CFR 260.11) which have applicability throughout the statutes and regulations as indicated in Consolidated Checklist C1 which includes the revisions made by Revision Checklists 5, 11, 13, 23, 24, 28, 34, 35, 39, 45, 49, 52, 67, 71, 73, 79, 82, 85, 99, 100, 109, 111, 112, 118, 125, 126, 128, 132, 139, 141, 142A, 142B, 142C, 142D, 154, 156, and 158.

Federal Authority: RCRA §§2002(a), 3001 through 3007, 3010, 3014, 3015, 3017 through 3019 and 7004; 40 CFR 260.10 and 260.11, as amended March 20, 1984 (49 FR 10490), December 4, 1984 (49 FR 47390), January 4, 1985 (50 FR 614), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27290), September 2, 1988 (53 FR 34079), September 29, 1989 (54 FR 40260), January 23, 1990 (55 FR 2322), March 9, 1990 (55 FR 8948), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), December 23, 1991 (56 FR 66365), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), November 18, 1992 (57 FR 54452), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 2, 1994 (59 FR 28484), December 6, 1994 (59 FR 62896), January 13, 1995 (60 FR 3089), April 4, 1995 (60 FR 17001), May 11, 1995 (60 FR 25492), February 12, 1997 (63 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

Title 35, Pennsylvania Statutes (1993), (35 P.S.), §§ 6018.103, 6018.104(1), 6018.105(a).

Title 25, Pennsylvania Code (25 Pa. Code), §§ 260a.1(a), 260a.3, 260a.10, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. §§ 6018.104(1) and 6018.105(a) give the Board the broad authority to administer the Commonwealth's solid waste management program and to adopt rules and regulations to accomplish the purposes and carry out the provisions of the SWMA. At 35 P.S. § 6018.103, Pennsylvania has defined terms which are used in the SWMA. These include all the terms listed on the State Legislation Checklist, except for the terms "generator" and "treatment, storage or disposal facility". The Commonwealth's statutes, like the Federal, do not contain definitions for these terms; however, the Act 97 provisions at 35 P.S. §§ 6018.104(1) and 6018.105(a) provide sufficient authority to develop a regulatory program addressing generators and these types of facilities. The Commonwealth's definitions for "disposal" and "transportation" differ from the Federal definitions, as discussed below:

The definition of the term "disposal" in the Pennsylvania statutes and at 25 Pa. Code § 260a.10 is slightly different from the RCRA definition in language, but has the same meaning.

The definition of "disposal" at 35 P.S. § 6018.103 is:

"Disposal." The incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of the Commonwealth. (Emphasis added)

The definition of disposal in §1004(3) of RCRA and at 40 CFR 260.10 is:

The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. (Emphasis added)

There is no substantive difference between the Federal "may enter the environment" and the state "enters the environment" because in application they both are the same test. Under the state program, a solid waste "enters the environment" if it is put on land or in water without adequate control to prevent contamination of the environment. Pennsylvania's definition of disposal does not require a showing of pollution, contamination or damage to the environment. Therefore, entering the environment occurs when the solid waste ceases to be properly managed under the control of the generator or transporter. Thus, in application a solid waste "enters the environment" at the point at which the waste is uncontrolled and "may enter the environment", making the two definitional tests equivalent.

In a likely enforcement context, the two definitions are also demonstrably equivalent. In a case in which hazardous wastes were placed on land or in water, but had not yet contaminated the environment, an enforcement agency would have to prove the likelihood of success on the merits and the likelihood of immediate and irreparable harm in order to be entitled to a preliminary injunction. Under either the RCRA or the Act 97 definition of "disposal", the agency would be required to demonstrate that a waste or waste constituent would be likely to contaminate the environment if not removed or contained in some way.

However, Pennsylvania law provides two other means of arguing a case where hazardous wastes threaten to contaminate the environment, but have not yet done so:

- (1) If the placement of wastes on land or water constitutes storage or treatment, such activity must be carried out under permit. The permit would be subject to modification or revocation under 35 P.S. § 6018.503(e) if the permitted activity were creating a potential hazard to public health, safety or welfare. The likelihood that unpermitted disposal would occur at a storage or treatment site would also be grounds under Act 97 for revocation or modification of the facility's permit. (35 P.S. § 6018.503(e))
- (2) Further, the Pennsylvania Supreme Court has determined that where a statute proscribes certain activity, all that need be proven to establish irreparable harm sufficient to support a preliminary injunction is that the illegal activity occurred. PUC v. Israel, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947); DER v. Coward, 489 Pa. 327, 341, 414 A.2d 91, 98 (1980). If the placement of wastes on land or water were carried out in violation of Act 97 or the regulations thereunder, as, for example, placement of drummed waste on land without the labeling as required by 40 CFR 262.31, incorporated at 25 Pa. Code § 262a.10, such a violation would entitle the Commonwealth to injunctive relief whether or not the wastes had entered the environment¹.

Pennsylvania also defines "disposal" in the context of solid waste, while the Federal code addresses disposal in terms of both solid and hazardous wastes. This is acceptable because under Pennsylvania's definition of solid waste, hazardous waste is a subset of solid waste. Pennsylvania includes "incineration" of solid waste in its definition of "disposal", which is broader in scope than the Federal definition. Although Pennsylvania omits "discharge" of solid waste from its definition of "disposal"; this does not alter the scope of the definition because the terms in the definition imply this type of emission. Pennsylvania does not include a reference to waste entering ground waters, however; groundwater is included in the definition of "Waters of the Commonwealth."

Pennsylvania interprets the statutory definition of "transportation" to include any movement of solid waste from its point of generation to any off-site area. This interpretation is equivalent to the Federal regulatory definition of "transportation" found at 40 CFR 260.10. As a general policy, Pennsylvania does not incorporate in its regulations Federal regulatory definitions for terms that are defined in the Commonwealth's statutes. In support of Pennsylvania's interpretation of the term "transportation," the Department has adopted by reference, at 25 Pa. Code Chapter 263a, all of the Federal regulatory provisions at 40 CFR Part 263 that are applicable to transporters.

As documented on Consolidated Checklist C1 in Subsection I.C below, the Commonwealth has adopted by reference 40 CFR 260.10 and 260.11, subject to certain modifications and additions to the 40 CFR 260.10 definitions. At 25 Pa. Code § 260a.3, Pennsylvania clarifies the terminology and citations related to the Federal regulations incorporated by reference. Specifically, the Commonwealth makes it clear that in applying the Federal requirements incorporated by reference, certain exceptions or substitutions apply, unless the context clearly requires otherwise.

¹Rule 1531 of the Pennsylvania Rules of Civil Procedure provides for an ex parte injunction without notice or hearing, which is the equivalent of the federal "temporary restraining order" (Fed. RCP 65(b)).

²B. *State statutes and regulations allow petitions for equivalent testing or analytical methods as specified in 40 CFR 260.21 and as indicated in Consolidated Checklist C1 which includes the requirements indicated in Revision Checklist 11.*

Federal Authority: RCRA §§2002(a), 3001 and 3004; 40 CFR 260.21, as amended December 4, 1984 (49 FR 47390).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(1), 6018.105(a).

25 Pa. Code §§ 260a.1(a), effective May 1, 1999.

Remarks of the General Counsel

35 P.S. §§ 6018.104(1) and 6018.105(a) give the Board the broad authority to administer the Commonwealth's solid waste management program and adopt rules and regulations to accomplish the purposes and to carry out the provisions of the Commonwealth's Solid Waste Management Act. The Commonwealth's regulations are identical to 40 CFR 260.21 because at 25 Pa. Code § 260a.1(a), Pennsylvania incorporates the Federal requirements by reference (see Consolidated Checklist C1 in Subsection I.C, below).

C. *Consolidated Checklist C1 - 40 CFR Part 260, Subpart A, plus §§ 260.10, 260.11 and 260.21, as of June 30, 1998 and Commonwealth Analogs.*

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General

40 CFR Part 260, Subpart A, plus §§ 260.10, 260.11 and 260.21, as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
SUBPART A - GENERAL						
Purpose, scope, and applicability	260.1	260a.1(a)	X			
Compliance with other Pennsylvania law	No Federal analog	260a.1(b)	D			

²The phrase "OPTIONAL: This is a reduced requirement" is used to indicate provisions that either are less stringent or reduce the scope of the program. Any State that adopts an "optional" requirement must ensure that it is at least as stringent as the Federal requirement.

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General 40 CFR Part 260, Subpart A, plus §§ 260.10, 260.11 and 260.21, as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: Pennsylvania adds a provision indicating that nothing in the requirements incorporated by reference in this chapter relieves or limits a person from comply with other Pennsylvania law. This does not affect equivalency.

Availability of information; confidentiality of information	260.2	No Commonwealth analog; 260a.2	Pennsylvania does not incorporate by reference 40 CFR 260.2, a provision that is not required for authorization.			
---	-------	--------------------------------	--	--	--	--

Legal Statement Comment: Pennsylvania excludes 40 CFR 260.2 from the incorporation by reference. The Commonwealth's regulations contain availability of information provisions in § 270a.12 and § 270a.82. The Commonwealth is not seeking authorization for Availability of Information (AI) at this time.

Use of number and gender	260.3	260a.1(a)	X			
Terminology and citations related to Federal regulations	No Federal analog	260a.3	D			

Legal Statement Comment: The Commonwealth includes a provision in § 260a.3 which modifies certain terms and citations used in Federal regulations that are incorporated by reference. This is necessary in order to adapt the Federal language to apply in the context of Pennsylvania's hazardous waste program. Unless otherwise indicated, the modifications impact all Federal provisions which have been incorporated by reference. For purposes of the Consolidated Checklists included in this Legal Statement, wherever there is a provision that has been incorporated by reference it should be assumed that the modifications in § 260a.3 are applicable unless specifically noted otherwise.

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General
40 CFR Part 260, Subpart A, plus §§ 260.10, 260.11 and 260.21, as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART B - DEFINITIONS

Legal Statement Comment: In order to clarify its regulations, Pennsylvania includes the following definitions in § 260a.10 for terms that are not defined in the Federal code:

“Act”, “Fund”, “Hazardous Sites Cleanup Act”, “Hazardous Sites Cleanup Fund”, “Host municipality”, “Pennsylvania hazardous waste facilities plan”, “Qualifying facility”, “Registered professional engineer” or “professional engineer”, “Registered professional geologist” or “professional geologist”, “Responsible official”, “Source reduction” and “State manifest document number”.

The Commonwealth also modifies the incorporation by reference of the definitions for “Existing tank system” or “existing component”, “New hazardous waste management facility”, and “New tank system” or “new tank component” so as to replace the Federal cutoff dates with Commonwealth dates to coincide with Pennsylvania’s adoption of the regulations that introduced these terms.

Definitions	260.10 except as otherwise noted on this checklist	260a.1(a)	X			
“Disposal”	260.10	260a.10	X			
“Facility”	260.10	260a.10	X			
“Management” or “Hazardous waste management”	260.10	260a.10	X			
“Person”	260.10	260a.10	X			
“RCRA”	260.10	260a.10	X			
“Storage”	260.10	260a.10	X			
“Transportation”	260.10	260a.10	X			
References	260.11	260a.1(a)	X			

SUBPART C - RULEMAKING PETITIONS

Petitions for equivalent testing or analytical methods	260.21	260a.1(a)	X			
---	--------	-----------	---	--	--	--

II. IDENTIFICATION AND LISTING

Federal Authority: Statutory Authorization RCRA §3001; 40 CFR 271.9, as amended September 22, 1986 (51 FR 33712).

A. *State statutes and regulations contain a list of hazardous wastes and characteristics for identifying hazardous waste which encompasses all wastes controlled under 40 CFR Part 261 as indicated in Consolidated Checklist C2 (formerly Checklists I B and I C), which includes the changes made by Revision Checklists 4, 7, 13, 14, 17 J, 18, 20, 21, 22, 23, 26, 29, 33, 34, 37, 41, 46, 53, 56, 57, 67, 68, 69, 72, 73, 74, 75, 76, 78, 81, 82, 83, 86, 88, 89, 91, 92, 110, 115, 119, 120, 126, 128, 134 140, 159, and 165, the specific provisions of which are detailed further in other subsections of this Legal Statement.*

Federal Authority: RCRA §3001(b); 40 CFR 261.10 through 261.35 and applicable appendices as amended February 10, 1984 (49 FR 5308), May 10, 1984 (49 FR 19922), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), July 15, 1985 (50 FR 28702), October 23, 1985 (50 FR 42936), December 31, 1985 (50 FR 53315), February 13, 1986 (51 FR 5327), February 25, 1986 (51 FR 6537), March 24, 1986 (51 FR 10146), May 28, 1986 (51 FR 19320), August 6, 1986 (51 FR 28296), October 24, 1986 (51 FR 37725), November 7, 1986 (51 FR 40572), June 5, 1987 (52 FR 21306), July 10, 1987 (52 FR 26012), April 22, 1988 (53 FR 13382), September 13, 1988 (53 FR 35412), October 31, 1988 (53 FR 43878), October 31, 1988 (53 FR 43881), September 29, 1989 (54 FR 40260), October 6, 1989 (54 FR 41402), December 11, 1989 (54 FR 50968), February 14, 1990 (55 FR 5340), March 9, 1990 (55 FR 8948), March 29, 1990 (55 FR 11798), May 2, 1990 (55 FR 18496), May 4, 1990 (55 FR 18726), June 1, 1990 (55 FR 22520), June 29, 1990 (55 FR 26986), November 2, 1990 (55 FR 46354), December 6, 1990 (55 FR 50450), December 17, 1990 (55 FR 51707), January 31, 1991 (56 FR 3864), February 25, 1991 (56 FR 7567), May 1, 1991 (56 FR 19951), May 13, 1991 (56 FR 21955), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), August 18, 1992 (57 FR 37284), October 15, 1992 (57 FR 47376), November 24, 1992 (57 FR 55114), December 24, 1992 (57 FR 61492), February 2, 1993 (58 FR 6854), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 20, 1994 (59 FR 31551), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), May 12, 1995 (60 FR 25619), May 4, 1998 (63 FR 24596), June 19, 1998 (63 FR 33782), and June 29, 1998 (63 FR 35147).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. § 6018.402.

25 Pa. Code § 261a.1, effective May 1, 1999.

Remarks of the General Counsel

35 P.S. § 6018.402 gives the Board the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. It also gives the Department the authority to regulate such hazardous wastes when the Department has determined that such waste poses a "substantial present or potential hazard" to human health or the environment. The Commonwealth has incorporated by reference the provisions in 40 CFR 261.10 through 261.35 and appendices regarding the identification and listing of hazardous waste. The Commonwealth's

regulations are identical to the Federal code, as shown in Consolidated Checklist C2 in Subsection II.E below.

On April 9, 1999, the United States Court of Appeals for the District of Columbia in Great Lakes Chemical Corporation v. EPA (Docket No. 98-1312) granted the U.S. Government's motion for a voluntary vacatur of the rules addressed by Revision Checklist 165. Because of this vacatur, EPA has withdrawn this revision checklist. Pennsylvania has adopted the additional listings (K140 and U408) addressed by Revision Checklist 165 [Organobromine Production Wastes, 63 FR 24596 (May 4, 1998), as amended June 29, 1998 at 63 FR 35147 and clarified on August 10, 1998 (63 FR 42580)]. Due to the recent vacatur, the Commonwealth does not intend to recognize the listings. To be consistent with the court vacatur, the Commonwealth plans to remove the listings in its next rulemaking. Wastes that exhibit a hazardous waste characteristic, however, will remain subject to full regulation despite the court vacatur of the listings.

The listing of K064, K065, K066, K090 and K091 was remanded by the United States Court of Appeals for the D.C. Circuit (American Mining Congress v. EPA, 907 F.2nd 1179 (D.C. Cir. 1990)). As such, Revision Checklist 53 explains that States are not required to list these wastes. Pennsylvania has adopted the additional listings by reference since they have not been removed from the Federal regulations. Due to the court remand, the Commonwealth does not intend to enforce the listings. To be consistent with the 1990 court decision, the Commonwealth plans to remove the listings in a future rulemaking. Wastes that exhibit a hazardous waste characteristic, however, will remain subject to full regulation despite the court remand of the listings.

B. State statutes and regulations define solid and hazardous waste so as to control all hazardous waste controlled under 40 CFR Part 261, as indicated in Consolidated Checklist C2 (formerly Checklist I A) which includes the changes made by Revision Checklists 8, 9, 13, 17 C, 19, 23, 28, 34, 49, 65, 71, 74, 80, 82, 83, 84, 85, 90, 92, 94, 95, 96, 104, 105, 107, 108, 109, 110, 111, 112, 117 A, 117 B, 122, 129, 135, 137, 140, 150, 156, 157, 164, 167D, 167E, 167F, and 168.

Federal Authority: RCRA §3001; 40 CFR 261.1 through 261.4 and 261.38, as amended June 5, 1984 (49 FR 23284), November 13, 1984 (49 FR 44978), January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), July 19, 1988 (53 FR 27290), September 1, 1989 (54 FR 36592), January 23, 1990 (55 FR 2322), March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), October 5, 1990 (55 FR 40834), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 1, 1991 (56 FR 3978), February 13, 1991 (56 FR 5910), February 21, 1991 (56 FR 7134), April 2, 1991 (56 FR 13406), June 13, 1991 (56 FR 27300), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), August 19, 1991 (56 FR 41164), August 27, 1991 (56 FR 42504), May 20, 1992 (57 FR 21524), June 22, 1992 (57 FR 27880), July 1, 1992 (57 FR 29220), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 18, 1992 (57 FR 37284), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062), October 30, 1992 (57 FR 49278), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), February 18, 1994 (59 FR 8362), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), May 12, 1995 (60 FR 25619), March 26, 1996 (61 FR 13103), February 12, 1997 (62

FR 6622), May 12, 1997 (62 FR 25998), April 15, 1998 (63 FR 18504), May 26, 1998 (63 FR 28556), and June 19, 1998 (63 FR 33782).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.103 and 6018.402.

25 Pa. Code §§ 261a.1, 261a.3 and 261a.4, effective May 1, 1999.

Remarks of the General Counsel

35 P. S. § 6018.402 gives the Board the authority to establish rules and regulations identifying the characteristics of hazardous waste and listing particular waste. It also gives the Department the authority to regulate such hazardous wastes when the Department has determined that such waste poses a "substantial present or potential hazard" to human health or the environment.

Pennsylvania also has the authority to go beyond the Federal program in classifying waste as hazardous, because the definition of hazardous waste considers a broader range of public health effects than in RCRA. The definition of "hazardous waste" in the Pennsylvania statutes includes the concept of an "increase in morbidity in either the individual or the total population," while the RCRA definition refers to an "increase in serious irreversible, or incapacitating irreversible, illness." The meaning of "morbidity" is construed from accepted technical definitions because it is not defined in the statutes or the regulations. Price v. Maxwell, 28 Pa. 23 (1857). "Morbidity" is defined in Dorland's Illustrated Medical Dictionary (24th Ed.), as both "the condition of being diseased" and "sick rate; the ratio of sick to well persons in a community." Thus, the Board, unlike EPA, is authorized to list as hazardous any waste which, because of its quantity, concentration or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in any illness in an individual or the total population.

The principal difference between the Federal and the Commonwealth categorization of wastes is that coal refuse and acid mine drainage treatment plant sludges are expressly excluded from the definition of hazardous waste in Act 97. These wastes are regulated under other Pennsylvania statutes. Under the federal scheme, these and other mining wastes are excluded by regulation at 40 CFR 261.4(b)(7). Although the Federal exemption is regulatory and the Commonwealth exemption is statutory, the effect is the same.

Pennsylvania's statutory definition of "hazardous waste" at 35 P.S. § 6018.103 includes "other discarded material including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or any combination of the above". Since "other discarded material" is a phrase that could include garbage and refuse from a water supply treatment plant or air pollution control facility, as well as garbage, refuse or sludge from a waste treatment plant, Pennsylvania's definition of "hazardous waste" is equivalent to the Federal definition of "solid waste" at RCRA § 1004(27).

At 35 P.S. § 6018.103, Pennsylvania defines "solid waste" as "any waste, including but not limited to, municipal, residual, or hazardous wastes." Pennsylvania does not include the exemptions for wastes in domestic sewage, or solid or dissolved materials in irrigation return flow or industrial discharges which are point sources under section 402 of the Federal Water Pollution Control Act, or

source, special nuclear, or byproduct material. Pennsylvania's statutory definition of "solid waste" exempts from the definition "coal ash" and "drill cuttings." "Coal ash" and "drill cuttings" are defined at 35 P.S. § 6018.103. "Coal ash" is defined as "fly ash, bottom ash or boiler slag resulting from the combustion of coal....". This definition excludes from the definition of solid waste the same materials that the Federal regulations exclude from hazardous waste regulation at 40 CFR 261.4(b)(4). For purposes of Pennsylvania's hazardous waste program, this statutory exclusion from the definition of "solid waste" is equivalent to the Federal regulatory exclusion found at 40 CFR 261.4(b)(4).

"Drill cuttings" are defined as "rock cuttings and related mineral residues created during the drilling of oil and gas wells." For purposes of Pennsylvania's hazardous waste program, this exclusion from the Commonwealth's statutory definition of "solid waste" is equivalent to the Federal exclusion found at 40 CFR 261.4(b)(5).

At 25 Pa. Code § 261a.1, Pennsylvania has incorporated by reference 40 CFR 261.1, 261.2, 261.3 (except 261.3(c)(2)(ii)(C)), 261.4 and 261.38, as indicated in Consolidated Checklist C2 in Subsection II.F below.

³C. State statutes and regulations provide: 1) exemption from regulations for hazardous waste as specified at 40 CFR 261.5, 261.6, 261.7, 260.40 and 260.41, 2) variance from classification as a solid waste as specified at 260.30, 260.31 and 260.33, 3) variance to be classified as a boiler as specified at 260.32 and 260.33, 4) regulation as a universal waste as specified in 261.9, or 5) capability to add a hazardous wastes as a universal waste as indicated in Consolidated Checklists C1 and C2 (formerly Checklist I A) which include the changes made by Revision Checklists 13, 14, 17 A, 17 J, 19, 23, 31, 34, 47, 79 112, 135, 137, 142A, 142B, 142C, 142D, 142E, 153, 154, 157, and 166.

Federal Authority: RCRA §3001; 40 CFR 260.23, 260.30 through 260.41, and 261.5 through 261.9, as amended January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), July 19, 1988 (53 FR 27162), June 21, 1990 (55 FR 25454), September 10, 1992 (57 FR 41566), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), July 1, 1996 (61 FR 34252), November 25, 1996 (61 FR 59932), May 12, 1997 (62 FR 25998), May 6, 1998 (63 FR 24963), and July 14, 1998 (63 FR 37780).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1), 6018.104(6) and 6018.105(a).

25 Pa. Code §§ 260a.1, 260a.30, 261a.1, 261a.5, 261a.6 and 261a.7, effective May 1, 1999.

³If a State chooses not to adopt these provisions, its statutes and regulations must make it clear that the wastes covered by 40 CFR 261.5, 261.6, and 261.7 are subject to full regulation under that State's hazardous waste regulations. If a State chooses to adopt these provisions, its requirements must be at least as stringent as the Federal requirements of 261.5, 261.6 and 261.7.

Remarks of the General Counsel

The Pennsylvania statutes do not include specific provisions addressing authority to provide variances or exemptions from its regulations for hazardous waste. However, in addition to the Commonwealth's provision at 35 P.S. § 6018.102, which lists the policy and purposes of the Solid Waste Management Act, 35 P.S. §§ 6018.104(1) and 6018.104(6) give the Department the general authority to regulate the storage, collection, transportation, processing, treatment and disposal of solid waste. Finally, 35 P.S. § 6018.105(a) gives the Board the broad authority to adopt rules and regulations to accomplish the purposes and carry out the provisions of the Commonwealth's Solid Waste Management Act.

The Pennsylvania regulations are identical to the Federal regulations, except for the provisions at 40 CFR 260.30, 261.5, 261.6 and 261.7. At 25 Pa. Code §§ 260a.1 and 261a.1, Pennsylvania has incorporated by reference, without changes, the Federal provisions at 40 CFR 260.23, 260.31 through 260.41, 261.8 and 261.9. The differences between the Pennsylvania regulations and the Federal provisions at 40 CFR 260.30, 261.5, 261.6 and 261.7 are documented in Consolidated Checklists C1 and C2 in Subsections II.E and II.F, respectively. As indicated on Consolidated Checklist C2, the Commonwealth's provisions at 25 Pa. Code §§ 261a.5(c) and 261a.6(d) are broader in scope because they address transporter licenses and fees, respectively.

D. State statutes and regulations for delisting hazardous wastes including public notice and opportunity for comment before requests are granted or denied as indicated in Consolidated Checklist C1 which includes the changes made by Revision Checklists 17 B, 34, 111, 126 and 142E.

Federal Authority: RCRA §§2002(a) and 3001; 40 CFR 260.20 and 260.22, as amended July 15, 1985 (50 FR 28702), November 7, 1986 (51 FR 40572), June 27, 1989 (54 FR 27114) August 25, 1992 (57 FR 38558), August 31, 1993 (58 FR 46040), and May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1), 6018.104(6), 6018.105(a).

25 Pa. Code §§ 260a.1 and 260a.20, effective May 1, 1999.

Remarks of the General Counsel

Under 35 P.S. §§ 6018.102, 6018.104(1), 6018.104(6), 6018.105(a), Pennsylvania has a broad authority to adopt rules addressing delisting of hazardous wastes and public participation in delisting decisions. At 25 Pa. Code § 260a.1, Pennsylvania has incorporated by reference the Federal provisions at 40 CFR 260.22; therefore, the Commonwealth's regulations establishing delisting procedures are identical to the Federal procedures. However, petition requests must comply with the Commonwealth's policy for processing instead of the procedures in 40 CFR 260.20(b)-(e). The differences between the Commonwealth's procedures and the Federal requirements at 40 CFR 260.20(b)-(e) are documented on Consolidated Checklist C1 in Subsection II.E below.

E. Consolidated Checklist C1 – 40 CFR Part 260, §§ 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41 and Appendix I, as of June 30, 1998 and Commonwealth Analogs

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General
40 CFR Part 260, §§ 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41 and Appendix I,
as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART C - RULEMAKING PETITIONS

General	260.20(a)	260a.1(a)	X			
Procedures for petitions	260.20(b)	260a.20 Chapter 23			X	

Legal Statement Comment: The Commonwealth does not incorporate the procedures for petitions at 40 CFR 260.20(b)-(e). Instead, 25 Pa. Code Chapter 23, relating to the Environmental Quality Board policy for processing petitions, is referenced. In Chapter 23, Pennsylvania requires the submission of additional information; therefore, the Commonwealth's program is more stringent.

Tentative decision, notice, hearing, and final decision	260.20(c)-(e)	MOA	D			
---	---------------	-----	---	--	--	--

Legal Statement Comment: The Commonwealth has no analogs to 40 CFR 260.20(c)-(e). In the MOA, the Commonwealth has agreed to publish notice of a tentative decision to allow for written comment, hold an informal public hearing upon written request, and publish the Department's final decision as a regulatory amendment or denial. Pennsylvania is authorized to enter into and carry out the provisions of a Memorandum of Agreement (MOA) between the Commonwealth and EPA by 35 P.S. §§ 6018.104(2), 6018.104(3), 6018.104(9) and 6018.104(13).

Petitions to amend part 261 to exclude a waste produced at a particular facility	260.22	260a.1(a)	X			
Petitions to amend 40 CFR part 273 to include additional hazardous wastes	260.23	260a.1(a)	X			

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General

40 CFR Part 260, §§ 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41 and Appendix I,
as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Variances from classification as a solid waste	260.30	260a.1(a)	X			
Coproduct transition scheme	No Federal analog	260a.30	D			

Legal Statement Comment: In § 260a.30, Pennsylvania includes a provision that describes how facilities that handle materials previously regulated as “coproducts”, prior to the adoption of the current regulations, should make the transition to the new regulatory variance mechanism. These wastes will continue to be regulated as if they are excluded from classification as a solid waste until a variance under 40 CFR 260.30 is acted upon by the Department. The request for a variance must be filed by May 1, 2001.

Standards and criteria for variances from classification as a solid waste	260.31	260a.1(a)	X			
Variance to be classified as a boiler	260.32	260a.1(a)	X			
Procedures for variances from classification as a solid waste or to be classified as a boiler	260.33	260a.1(a)	X			
Additional regulation of certain hazardous waste recycling activities on a case-by-case basis	260.40	260a.1(a)	X			

CONSOLIDATED CHECKLIST C1

Hazardous Waste Management System: General
40 CFR Part 260, §§ 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41 and Appendix I,
as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Procedures for case-by-case regulation of hazardous waste recycling activities	260.41	260a.1(a)	X			

APPENDIX TO PART 260

Overview of subtitle C regulations	Appendix I	260a.1(a)	X			
------------------------------------	------------	-----------	---	--	--	--

**F. Consolidated Checklist C2 – 40 CFR Part 261, as of June 30, 1998 and
Commonwealth Analogs**

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste
40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A- LENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART A - GENERAL

Purpose and scope	261.1	261a.1	X			
Definition of solid waste	261.2	261a.1	X			
Definition of hazardous waste	261.3 except (c)(2)(ii)(C)	261a.1	X			

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste 40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A-LENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Nonwastewater residues resulting from HTMR processing of K061, K062 or F006 waste.	261.3(c)(2)(ii) (C)	No analog per 261a.3			X	

Legal Statement Comment: The Commonwealth does not incorporate by reference the Federal exemption for HTMR slags that meet certain criteria and that are disposed of in Subtitle D units. Pennsylvania is more stringent because activities involving the generation, treatment, storage and disposal of such wastes are fully regulated.

Exclusions	261.4 except (b)(11)(ii)	261a.1	X			
Written agreement must be submitted to EPA and the Department	261.4(b)(11) (ii)	261a.1 261a.4			X	

Legal Statement Comment: The Commonwealth requires that a copy of the written State agreement required by 40 CFR 261.4(b)(11)(ii) be submitted to the Department in addition to EPA.

Requirements for hazardous waste generated by conditionally exempt small quantity generators	261.5 except (c)(4), (j), (f) (3)(iv) and (v), and (g)(3)(iv) and (v)	261a.1	X			
Used oil; waste mixed with used oil	261.5(c)(4) and (j)	261a.1 261a.5(a)	X			

Legal Statement Comment: Pennsylvania has modified the incorporation by reference of 40 CFR 261.5(c)(4) and (j) to reference the Commonwealth's regulations regarding used oil in Chapter 266a, Subchapter E. Pennsylvania has not adopted the current Federal regulations addressing used oil in 40 CFR Part 279 and is not seeking authorization for a used oil program at this time.

CESQG waste disposal	261.5(f)(3)(iv) and (v) 261.5(g)(3)(iv) and (v)	261a.1 261a.5(b)			X	
----------------------	--	---------------------	--	--	---	--

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste 40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A- LENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: The Commonwealth is more stringent in that conditionally exempt small quantity generators may not dispose of hazardous waste in a municipal or residual waste landfill in Pennsylvania.

CESQG deemed to have a license for transportation	No Federal analog in Part 261	261a.5(c)				X
---	-------------------------------	-----------	--	--	--	---

Legal Statement Comment: The requirement that hazardous waste transporters obtain a license is beyond the scope of the Federal program.

Requirements for recyclable materials	261.6(a) except (a)(4)	261a.1	X			
Used oil that is recycled	261.6(a)(4)	261a.1 261a.6(a)	X			

Legal Statement Comment: Pennsylvania has modified the incorporation by reference of 40 CFR 261.6(a)(4) to reference the Commonwealth's regulations regarding used oil in Chapter 266a, Subchapter E. Pennsylvania has not adopted the current Federal regulations addressing used oil in 40 CFR Part 279 and is not seeking authorization for a used oil program at this time.

Generators and transporters of recyclable materials	261.6(b)	261a.1	X			
Storage and treatment of recyclable materials	261.6(c)	261a.6(b) and (c)			X	

Legal Statement Comment: Pennsylvania does not incorporate 40 CFR 261.6(c) by reference because the Commonwealth believes that the provision exempts from the permitting requirements all nonstorage related recycling activities, including nonstorage activities that occur prior to the actual recycling or reclamation process (i.e., treatment). Pennsylvania is more stringent in that activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery are subject to full regulation. Note that the sizing, shaping or sorting of recyclable materials is not considered a treatment process.

Administration fees	No Federal analog in Part 261	261a.6(d)				X
---------------------	-------------------------------	-----------	--	--	--	---

Legal Statement Comment: Facilities that store or treat recyclable materials are not required to pay administration fees. Regulations regarding such fees are beyond the scope of the Federal program.

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste 40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A-LENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Applicability of Subparts AA and BB of Parts 264 and 265	261.6(d)	261a.1	X			
Residues of hazardous waste in empty containers	261.7	261a.1 261a.7	D			

Legal Statement Comment: In § 261a.7, the Commonwealth's regulations clarify that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners.

PCB wastes regulated under Toxic Substance Control Act	261.8	261a.1	X			
Requirements for Universal Waste	261.9	261a.1	X			

SUBPART B - CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE AND FOR LISTING HAZARDOUS WASTES

Criteria for identifying the characteristics of hazardous waste	261.10	261a.1	X			
Criteria for listing hazardous waste	261.11	261a.1	X			

SUBPART C - CHARACTERISTICS OF HAZARDOUS WASTE

General	261.20	261a.1	X			
Characteristic of ignitability	261.21	261a.1	X			
Characteristic of corrosivity	261.22	261a.1	X			
Characteristic of reactivity	261.23	261a.1	X			
Toxicity characteristic	261.24	261a.1	X			

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste 40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A- LENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART D - LISTS OF HAZARDOUS WASTES

General	261.30	261a.1	X			
Hazardous wastes from non-specific sources	261.31	261a.1	X			
Hazardous wastes from specific sources	261.32	261a.1	X			
Discarded commercial chemical products, off- specification species, container residues, and spill residues thereof	261.33	261a.1	X			
Deletion of certain hazardous waste codes following equipment cleaning and replacement	261.35	261a.1	X			
Comparable/syngas fuel exclusion	261.38	261a.1	X			

APPENDICES TO PART 261

Representative sampling methods	Appendix I	261a.1	X			
Method 1311 toxicity characteristic leaching procedure (TCLP)	Appendix II	261a.1	X			
Chemical analysis test methods	Appendix III	261a.1	X			
[Reserved]	Appendices IV-VI	261a.1	X			
Basis for listing hazardous waste	Appendix VII	261a.1	X			

CONSOLIDATED CHECKLIST C2

Identification and Listing of Hazardous Waste 40 CFR Part 261 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV A-LENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Hazardous constituents	Appendix VIII	261a.1	X			
Wastes excluded under §§260.20 and 260.22	Appendix IX	261a.1	X			

III. STANDARDS FOR GENERATORS

Federal Authority: RCRA §3002; 40 CFR 271.10, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), March 20, 1984 (49 FR 10490), March 26, 1984 (49 FR 11180), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide coverage of all generators covered by 40 CFR Part 262 and include requirements for EPA identification number, reporting and recordkeeping, accumulation of hazardous waste for short time periods, waste placed in containment buildings, packaging, labeling, marking, placarding, international shipments, manifesting of hazardous waste for off-site shipment, notification procedures for interstate shipments as indicated in Consolidated Checklist C3 (formerly Checklist II) which includes the revisions represented by Revision Checklists 1, 5, 12, 17 D, 17 R, 23, 28, 31, 32, 34, 39, 42, 48, 58, 71, 78, 82, 83, 92, 97 109, 142A, 154, and 156.

Federal Authority: RCRA §3002; 40 CFR Part 262, as amended January 28, 1983 (48 FR 3977), March 20, 1984 (49 FR 10490), December 20, 1984 (49 FR 49568), July 15, 1985 (50 FR 28702), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), August 8, 1986 (51 FR 28664), October 1, 1986 (51 FR 35190), November 7, 1986 (51 FR 40572), July 8, 1987 (52 FR 25760), September 23, 1987 (52 FR 35894), July 19, 1988 (53 FR 27164), November 8, 1988 (53 FR 45089), January 23, 1990 (55 FR 2322), June 1, 1990 (55 FR 22520), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), July 1, 1991 (56 FR 30192), September 4, 1991 (56 FR 43704), August 18, 1992 (57 FR 37194), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(1), 6018.104(6), 6018.105(a), 6018.401(a) and 6018.403.

25 Pa. Code Chapter 262a, effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's regulations pertaining to generators are authorized both by specific and general provisions in the SWMA. Examples of specific provisions are 35 P.S. §§ 6018.403(b)(2) and (3), which require accurate labeling and packaging in appropriate containers, and 35 P.S. §§ 6018.403(b)(5) and (7), which require that a manifest system be used and that reports listing quantities of wastes generated and the method of their disposal be submitted to the Department. These provisions of Act 97 expressly authorize the regulations concerning the manifest and reporting systems, including the requirements concerning international shipments and exception reporting. The hazardous waste determination provisions, set forth in 35 P.S. §§ 6018.403(b)(1), (4), (5), and (7), require the generator to determine the nature of his waste and the basis for its classification as hazardous. Similarly, 35 P.S. §§ 6018.403(b)(1), (5), and (7) authorize a tracking or recordkeeping system, of which an identification number is a natural or reasonably expected element. Finally, 35 P.S. § 6018.401(a) makes it illegal for generators to store, transport, treat or dispose of waste unless authorized by the rules of the Department.

Those aspects of the Department's regulatory system which are not authorized by a specific provision of Act 97 are authorized under the general provisions of Act 97. 35 P.S. § 6018.403(a), for example, forbids a generator to transfer hazardous waste unless such generator complies with the Department's rules, regulations, permits, licenses, and orders. 35 P.S. § 6018.104(2) authorizes the Department to cooperate with appropriate Federal, State, interstate, and local units of government in carrying out its duties under the Act. These sections, combined with the general rulemaking authority in 35 P.S. § 6018.105(a), authorize the Department to establish such elements of the regulatory system as tracking interstate or international hazardous waste shipments by using manifest and reporting systems compatible with those of EPA and other states.

Prior to Base Program authorization, EPA questioned whether 35 P.S. §§ 6018.403(b)(5) and 6018.403(b)(6) require disposal of solid hazardous waste only at a properly authorized facility in Pennsylvania or at a RCRA authorized facility outside Pennsylvania, while prohibiting disposal at an unauthorized out-of-state facility. With the exception of the provisions identified and commented on in Consolidated Checklist C3 below, Pennsylvania has regulations that are identical to the 40 CFR Part 262 generator requirements. The Commonwealth incorporates these provisions by reference at 25 Pa. Code § 262a.10, including the reference to "designated facility" at 40 CFR 262.20. The Commonwealth has also adopted by reference the 40 CFR 260.10 definition of "designated facility". Thus, Pennsylvania's regulations clarify that only a facility which has a permit from a RCRA-authorized state or from EPA, or interim status may be a designated facility for shipments outside the Commonwealth.

EPA has also asked whether the Department has general authority to issue regulations implementing the prohibitions in 35 P.S. § 6018.403. This authority resides with the Board, not with the Department. 35 P.S. § 6018.105(a) authorizes the Board to adopt the Department's rules and regulations in order to "carry out the provisions of this Act". Provisions such as 35 P.S. § 6018.403(b)(1)-(7) serve as a more specific description of principles and policies which may be codified or implemented in the form of regulations. 35 P.S. §§ 6018.403(a) and 6018.403(b)(8) and (9) prohibit any person who generates or manages hazardous waste from transferring, transporting, treating, storing, or disposing of such waste unless such person complies with Department regulations. Consequently, the Board has the authority to promulgate regulations implementing any requirement of Act 97, including the prohibitions set forth in 35 P.S. § 6018.403. The prohibitions are self-executing; they would apply to all persons who undertake hazardous waste management activities even if the Board did not promulgate regulations that codify the statutory prohibitions.

Consolidated Checklist C2 in Subsection III.B below shows the equivalency between the Commonwealth's generator requirements and the Federal requirements at 40 CFR Part 262.

B. Consolidated Checklist C3 – 40 CFR Part 262 as of June 30, 1998 and Commonwealth Analogs

CONSOLIDATED CHECKLIST C3

**Standards Applicable to Generators of Hazardous Waste
40 CFR PART 262 as of July 1, 1998**

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 262a the following provisions limit the applicability of the substitution of terms: § 262a.12(a), § 262a.21, § 262a.23(b), Subpart E, and § 262a.80. No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

SUBPART A - GENERAL

Purpose, scope and applicability	262.10	262a.10	X			
Hazardous waste determination	262.11	262a.10	X			
EPA identification numbers	262.12	262a.10 262a.12	D			

Legal Statement Comment: In § 262a.12, the Commonwealth clarifies that a subsequent notification is required when the generator activity changes locations, the designated contact person changes, ownership changes, or the activity at the facility changes.

SUBPART B - THE MANIFEST

Manifest required for shipments of hazardous waste	262.20(a)	262a.20(1) and (4)	D			
--	-----------	--------------------	---	--	--	--

CONSOLIDATED CHECKLIST C3

Standards Applicable to Generators of Hazardous Waste 40 CFR PART 262 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUI V- ALEN T	LESS STRI N- GEN T	MOR E STRI N- GENT	BRO ADE R IN SCOP E

Legal Statement Comment: Pennsylvania does not incorporate by reference 40 CFR 262.20(a). The only substantive difference found in the Commonwealth's analogs is that § 262a.20(1) does not contain a specific reference to the required manifest form. The Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22a in 40 CFR 262 Appendix) are incorporated by reference in § 262a.10; therefore, the Commonwealth provision is equivalent. In addition, the provision in § 262a.20(4) merely clarifies that the required information on the form must be legible.

Designated facility	262.20(b) and (c)	262a.20(5)			X	
---------------------	-------------------	------------	--	--	---	--

Legal Statement Comment: Pennsylvania's regulations are more stringent because a generator is not allowed to identify an alternate facility to handle the hazardous waste. In the case where the waste cannot be delivered to the designated facility, the transporter must contact the generator who must designate a different facility or instruct the transporter to return the waste.

General requirements	262.20(d), (e) and (f)	262a.10	X			
Acquisition of manifests	262.21	262a.10 262a.21	X			
Number of copies	262.22	262a.22			X	

Legal Statement Comment: The Commonwealth is more stringent by requiring that the manifest consist of enough copies to allow the designated facility to send copies to the generator State and the destination State.

Use of the manifest	262.23 except (e)	262a.10	X			
Out-of-State manifest form which does not include copy to be sent to the Department	No Federal analog in 262.23	262a.23(a)(2)			X	

Legal Statement Comment: The Commonwealth requires that a copy of the manifest be sent to the Department with all required signatures. When a manifest form does not include a copy to be sent to the Department, the generator is responsible for sending a photocopy of the manifest to the Department once it is returned with all required signatures. This makes the Commonwealth's program more stringent than the Federal program.

CONSOLIDATED CHECKLIST C3

Standards Applicable to Generators of Hazardous Waste 40 CFR PART 262 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRINGENT	MORE STRINGENT	BROADEN SCOPE
Shipments to facilities in states not authorized to regulate certain wastes	262.23(e)	262a.10 262a.23(b)	X			

SUBPART C - PRE-TRANSPORT REQUIREMENTS

Packaging	262.30	262a.10	X			
Labeling	262.31	262a.10	X			
Marking	262.32	262a.10	X			
Placarding	262.33	262a.10	X			
Accumulation time	262.34	262a.10	X			

SUBPART D - RECORDKEEPING AND REPORTING

Recordkeeping	262.40	262a.10	X			
Biennial report	262.41(a) introductory paragraph	262a.41	X			
Biennial report	262.41 except introductory paragraph of (a)	262a.10	X			
Exception reporting	262.42	262a.10 262a.42	D			

Legal Statement Comment: Section 262a.42 modifies the incorporated text of 40 CFR 262.42 by excluding the phrase "for the region in which the generator is located." That phrase is only applicable in the context of the Federal program.

Additional reporting	262.43	262a.10	X			
Special requirements for generators of between 100 and 1000 kg/month	262.44	262a.10	X			

SUBPART E - EXPORTS OF HAZARDOUS WASTE

CONSOLIDATED CHECKLIST C3

Standards Applicable to Generators of Hazardous Waste 40 CFR PART 262 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUI V- ALEN T	LESS STRI N- GEN T	MOR E STRI N- GENT	BRO ADE R IN SCOP E

Legal Statement Comment: The substitution of terms in § 260a.3 does not apply to the incorporation by reference of Subpart E of 40 CFR Part 262. EPA retains authority for regulation of exports.

Applicability	262.50	262a.10 262a.55	X			
Definitions	262.51	262a.10 262a.55	X			
General requirements	262.52	262a.10 262a.55	X			
Notification of intent to export	262.53	262a.10 262a.55	X			
Special manifest requirements	262.54	262a.10 262a.55	X			
Exception reports	262.55	262a.10 262a.55	X			
Annual reports	262.56	262a.10 262a.55 262a.56	X			

Legal Statement Comment: The Commonwealth includes a paragraph at § 262a.56 regarding substitution of terms relating to standards applicable to generators of hazardous waste. This paragraph was included in error and will be removed by the Commonwealth in a future rulemaking. Note that the substitution of terms does not apply to the incorporated text of 40 CFR 262.56, as indicated in § 262a.55.

Recordkeeping	262.57	262a.10 262a.55 262a.57	X			
---------------	--------	-------------------------------	---	--	--	--

Legal Statement Comment: The Commonwealth includes a paragraph at § 262a.57 regarding substitution of terms relating to standards applicable to generators of hazardous waste. This paragraph was included in error and will be removed by the Commonwealth in a future rulemaking. Note that the substitution of terms does not apply to the incorporated text of 40 CFR 262.57, as indicated in § 262a.55.

International agreements	262.58	262a.10 262a.55	X			
--------------------------	--------	--------------------	---	--	--	--

CONSOLIDATED CHECKLIST C3

Standards Applicable to Generators of Hazardous Waste 40 CFR PART 262 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUI V- ALEN T	LESS STRI N- GEN T	MOR E STRI N- GENT	BRO ADE R IN SCOP E

SUBPART F - IMPORTS OF HAZARDOUS WASTE

Imports of hazardous waste	262.60	262a.10	X			
----------------------------	--------	---------	---	--	--	--

SUBPART G - FARMERS

Farmers	262.70	262a.10	X			
---------	--------	---------	---	--	--	--

SUBPART H - TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD

Applicability	262.80	262a.10 262a.80	X			
Definitions	262.81	262a.10 262a.80	X			
General conditions	262.82	262a.10 262a.80	X			
Notification and consent	262.83	262a.10 262a.80	X			
Tracking document	262.84	262a.10 262a.80	X			
Contracts	262.85	262a.10 262a.80	X			
Provisions relating to recognized traders	262.86	262a.10 262a.80	X			
Reporting and recordkeeping	262.87	262a.10 262a.80	X			
[Reserved]	262.88	262a.10 262a.80	X			
OECD Waste Lists	262.89	262a.10 262a.80	X			

NO ANALOGOUS SUBPART IN 40 CFR PART 262

CONSOLIDATED CHECKLIST C3

Standards Applicable to Generators of Hazardous Waste 40 CFR PART 262 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
Source reduction strategy	No Federal analog in Part 262	262a.100			X	

Legal Statement Comment: Pennsylvania is more stringent than the Federal program in that the regulations require that generators prepare a source reduction strategy.

APPENDIX TO PART 262

Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22a and their Instructions)	Appendix	262a.10 262a.20(2) and (3) 262a.23(a)(1)	D			
---	----------	--	---	--	--	--

Legal Statement Comment: In § 262a.20(2), Pennsylvania only allows four waste streams to be listed on a single manifest. In § 262a.20(3), Pennsylvania requires that the continuation sheet be used when there are more than two transporters or for lab packs with more than four different waste streams in one shipment. The provision in § 262a.23(a)(1) clarifies that the date of shipment must be recorded in the designated space on the manifest.

IV. STANDARDS FOR TRANSPORTERS

Federal Authority: RCRA §3003; 40 CFR 271.11, as amended April 1, 1983 (48 FR 14146), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide coverage of all the transporters covered by 40 CFR Part 263 and include requirements for EPA identification number, recordkeeping, manifesting, and actions regarding hazardous waste discharged during transit, as indicated in Consolidated Checklist C4 (formerly Checklist III) which includes the changes made by Revision Checklists 23, 31, 34 and 156.

Federal Authority: RCRA §3003; 40 CFR Part 263, as amended March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(1)&(6), 6018.105(a), 6018.401, 6018.403, 6018.404(b), 6018.501(b), 6018.502, 6018.503, 6018.505(e) and 6018.610(6).

25 Pa. Code Chapter 263a, effective May 1, 1999.

Remarks of the General Counsel

With respect to those matters governed by 40 CFR Part 263, relating to transporter requirements, Pennsylvania's regulatory program is virtually identical to the Federal scheme, as indicated in Consolidated Checklist C4 in Subsection IV.B below.

Both 35 P.S. §§ 6018.105(a) and 6018.403 provide legal support for these regulations, and the regulatory requirements which are not specifically stated in the statutory language can be necessarily inferred from the statutory scheme. For example, the identification number requirement established in 40 CFR 263.11, as adopted by reference at 25 Pa. Code §§ 263a.10(a) and 263a.11, is an essential element of the manifest tracking and recordkeeping systems required by 35 P.S. §§ 6018.403(b)(5) and (b)(7). In order to use the data collected by these systems for enforcement and administrative purposes, it is necessary to have a number that can provide quick access to information on a particular transporter. The number may be obtained from either EPA or the Department.

Similarly, the requirement in 40 CFR 263.30, as incorporated by reference 25 Pa. Code § 263a.10 and modified at 25 Pa. Code § 263a.30, that requires transporters to notify the National Response Center or the Department, in the event of a spill or discharge, is authorized by the statutory requirement in 35 P.S. § 6018.403(b)(12) that transporters "take immediate steps to contain and clean up the spill or discharge" and the direction in 35 P.S. § 6018.105(b) that the Board is to adopt regulations which will protect the safety, health, welfare and property of the public.

Pennsylvania's regulations include several provisions that are broader in scope than the Federal program. Examples of such provisions, which are documented in Consolidated Checklist C4 below, include the following:

- (1) Hazardous waste transporters must obtain a license from the Department. 25 Pa. Code § 263a.13.
- (2) A fee is assessed on hazardous waste transportation (1) to a location within the Commonwealth from a location out-of-State; (2) from a location within the Commonwealth to a location out-of-State; and (3) from one location to another within the Commonwealth. 25 Pa. Code §§ 263a.23 - 263a.26.
- (3) Transporters of hazardous waste are subject to bonding requirements. 25 Pa. Code § 263a.32.

35 P.S. §§ 6018.401, 6018.404(b), 6018.501(b), 6018.502, 6018.503 and 6018.505(e) provide the Commonwealth with the authority to impose licensing and bonding requirements on hazardous waste transporters. The additional regulatory protection afforded by the Department's licensing program and bonding requirements applies only to transporters of waste which is generated, stored,

treated or disposed in Pennsylvania. However, because the term "disposal" is so broadly defined in 35 P.S. § 6018.103, any leakage, spill, or other incident resulting in a discharge of hazardous waste to the environment in Pennsylvania, subjects all interstate transportation to the full regulatory provisions set forth in 25 Pa. Code Chapter 263a. Finally, 35 P.S. § 6018.610(6) requires transportation of solid waste to a permitted facility.

B. Consolidated Checklist C3 – 40 CFR Part 263 as of June 30, 1998 and Commonwealth Analogs

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 263a the following provisions limit the applicability of the substitution of terms: §§ 263a.11 and 263a.20. No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C4

**Standards Applicable to Transporters of Hazardous Waste
40 CFR Part 263 as of July 1, 1998**

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
SUBPART A - GENERAL						
Scope	263.10	263a.10(a) 263a.10(b)	X			
EPA identification number	263.11	263a.10(a) 263a.11	X			
Transfer facility requirements	263.12	263a.10(a)	X			
In-transit storage preparedness, prevention and contingency plan	No Federal analog in 263.12	263a.12				X

Legal Statement Comment: In § 263a.12(1), Pennsylvania requires a preparedness, prevention and contingency plan for transporters utilizing in-transit storage of hazardous waste for periods of not more than 10 days but greater than 3 days. In § 263a.12(2), Pennsylvania requires an in-transit storage preparedness, prevention and contingency plan for transporters transferring hazardous waste from one vehicle to another at a transfer facility. These requirements are beyond the scope of the Federal program.

CONSOLIDATED CHECKLIST C4

Standards Applicable to Transporters of Hazardous Waste 40 CFR Part 263 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Licensing	No Federal analog	263a.13				X

Legal Statement Comment: Pennsylvania requires transporters to obtain a license. Licensing of transporters is beyond the scope of the Federal program.

SUBPART B - COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

The manifest system	263.20 except (a)	263a.10(a) 263a.20(1)	X			
Manifest must be accurate and complete	263.20(a)	263a.10(a) 263a.20(1) 263a.21	D			

Legal Statement Comment: In § 263a.21, the Commonwealth clarifies that a transporter may not accept hazardous waste that does not accurately correspond with the information contained on the manifest.

Transporter must print or type name	No Federal analog in 263.20	263a.20(2)			X	
-------------------------------------	-----------------------------	------------	--	--	---	--

Legal Statement Comment: In addition to the requirements of 40 CFR 263.20 which are incorporated by reference, Pennsylvania requires that the transporter print or type his name on the manifest. This makes the Commonwealth's program more stringent than the Federal program.

Compliance with the manifest	263.21	263a.10(a)	X			
Recordkeeping	263.22	263a.10(a)	X			
Hazardous waste transportation fee; documentation; civil penalties; assessment of penalties	No Federal analogs	263a.23 - 263a.26				X

Legal Statement Comment: Pennsylvania requires transporters to pay hazardous waste transportation fees. Such fees are beyond the scope of the Federal program.

SUBPART C - HAZARDOUS WASTE DISCHARGES

CONSOLIDATED CHECKLIST C4

Standards Applicable to Transporters of Hazardous Waste 40 CFR Part 263 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Immediate action	263.30(a)	263a.10(a) 263a.30			X	

Legal Statement Comment: The Commonwealth is more stringent in that all discharges during transportation must be reported to the Department.

Required responses	263.30 except (a)	263a.10(a)	X			
Discharge clean up	263.31	263a.10(a)	X			
Bonding	No Federal analog	263a.32				X

Legal Statement Comment: Pennsylvania's program contains bonding requirements for transporters which are beyond the scope of the Federal program.

V. STANDARDS FOR FACILITIES

Federal Authority: RCRA §§3004 and 3004(e); 40 CFR 271.12 and 271.13(a), as amended on April 1, 1983 (48 FR 14146) and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide standards for hazardous waste management facilities equivalent to 40 CFR Parts 264 and 266 including: 1) technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, land treatment facilities, boilers and industrial furnaces, containment buildings, 2) preparedness for and prevention of discharges or releases of hazardous waste, 3) contingency plans and emergency procedures, 4) closure and post-closure requirements, including financial requirements ensuring that money will be available during these periods for monitoring and maintenance, 5) ground-water monitoring, 6) security to prevent unauthorized access to the facility, 7) facility personnel training, 8) inspections, monitoring, recordkeeping and reporting; 9) manifest requirements, and 10) other requirements to the extent they are included in 40 CFR Parts 264 and 266. These standards for hazardous waste management facilities are as indicated in Consolidated Checklists C5 (formerly Checklist IV A) and C7 which include the changes made by Revision Checklists 1, 13, 14, 16, 17 D, 17 E, 17 F, 17 G, 17 H, 17 I, 17 J, 17 K, 19, 24, 27, 28, 30, 34, 37, 39, 40, 43, 45, 48, 50, 52, 54, 55, 64, 66, 74, 77, 78, 79, 82, 85, 87, 91, 92, 94, 96, 98, 100, 101, 102, 105, 109, 111, 112, 113, 114, 118, 120, 122, 124, 125, 126, 127, 131, 133, 135, 136, 137, 142A, 142B, 142C, 142D, 145, 154, 156, 158, and 163.

Federal Authority: RCRA §3004; 40 CFR Parts 264 and 266, as amended January 28, 1983 (48 FR 3977), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), August 20, 1985 (50 FR 33541), November 29, 1985 (50 FR 49164), May 2, 1986 (51 FR 16422), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), June 4, 1987 (52 FR 21010), June 5, 1987 (52 FR 21306), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), November 18, 1987 (52 FR 44314), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), October 11, 1988 (53 FR 39720), August 14, 1989 (54 FR 33376), September 6, 1989 (54 FR 36967), March 29, 1990 (55 FR 11798), May 9, 1990 (55 FR 19262), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), September 5, 1991 (56 FR 43874), January 29, 1992 (57 FR 3462), February 18, 1992 (57 FR 5859), March 6, 1992 (57 FR 8086), June 22, 1992 (57 FR 27880), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), July 1, 1991 (56 FR 30200), September 10, 1992 (57 FR 41566), September 16, 1992 (57 FR 42832), September 30, 1992 (57 FR 44999), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), November 9, 1993 (59 FR 59598), March 24, 1994 (59 FR 13891), June 10, 1994 (59 FR 29958), July 28, 1994, (59 FR 38536), August 24, 1994 (59 FR 43496), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932), February 12, 1997 (62 FR 6622), June 13, 1997 (62 FR 32452), and December 8, 1997 (62 FR 64636).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102(4), 6018.104(1)&(6), 6018.105(a), 6018.401, 6018.403, 6018.501, 6018.502, 6018.507 and 6018.608(2).

25 Pa. Code Chapters 264a (except Subchapter H) and 266a, effective May 1, 1999.

Remarks of the General Counsel

Act 97, like RCRA, requires that owners and operators of treatment, storage, and disposal facilities obtain permits and operate in compliance with them. These permit requirements are set forth in 35 P.S. §§ 6018.401, 6018.403(b)(9), 6018.501 and 6018.502. The enforcement and remedies provisions in Article VI of the statute authorize both civil and criminal penalties for violations of the permit requirements.

35 P.S. §§ 6018.401 and 6018.403(b)(9) also require compliance with facility standards contained in 25 Pa. Code Chapters 264a and 266a. 35 P.S. § 6018.608(2) also requires any person or municipality engaged in the storage, transportation, processing, beneficial use or disposal of any solid waste to establish and maintain such records and make such reports as the Department may prescribe. The regulations are amply supported by the statutory authorization at 35 P.S. §

6018.105(a), as well as the requirements stated in Article IV and Article V of Act 97. The Department has the express duty to regulate the storage, collection, transportation, processing, treatment, and disposal of hazardous waste under 35 P.S. §§ 6018.104(1) and (6). Aspects of facility operation such as monitoring, inspecting, location, design, construction, ownership, closure and post-closure activities, and continuity of operation are necessary in order to implement that duty in accordance with the legislative mandate in 35 P.S. § 6018.102(4) to protect the public health, safety and welfare from the short and long term dangers of hazardous waste management activities. Therefore permits, including post-closure permits, may contain any relevant standards in 25 Pa. Code Chapter 264a as permit conditions. Finally, 35 P.S. § 6018.507(a)(1) gives the Department the authority to develop, prepare, and modify a Hazardous Waste Facilities Plan which includes siting criteria and standards. The Commonwealth's regulatory provisions for siting hazardous waste treatment and disposal facilities, as found in 25 Pa. Code Chapter 269a, are either more stringent or broader in scope than the Federal program.

The Commonwealth's program includes three requirements regarding notices to future purchasers of property used to manage hazardous wastes, which together are more comprehensive than the comparable Federal requirements. First, the requirements of 40 CFR 264.119(b)(1)(ii) and (iii) requiring the recording of notice to future purchasers of use restrictions and survey plats on land used for hazardous waste disposal are incorporated by reference at 25 Pa. Code § 264a.1(a). Second, 35 P.S. § 6018.405 requires grantors to acknowledge any known hazardous waste disposal on the deed conveying property. This provision protects purchasers where property may have been used for hazardous waste disposal which was not permitted at all or which occurred long before permits were required. The third requirement imposed by the Pennsylvania regulatory scheme is the landowner consent form required by 35 P.S. § 6018.502(b) as part of the application requirements for permits and licenses. This document is required to be recorded in the Office of Recorder of Deeds and must be on a form prepared and furnished by the Department. A copy of this form has been appended to this Statement. (Appendix 6) It should be noted that the final sentence expresses the landowner's intent to bind his "heirs, successors and assigns" and, if recorded as required, is binding on subsequent landowners.

With the exception of the Commonwealth's financial responsibility requirements, the regulations are largely identical or equivalent to 40 CFR Parts 264 and 266, as indicated Consolidated Checklists C5 and C7 in Subsections V.D and V.E below. Pennsylvania's financial responsibility requirements are discussed in detail in Subsection V.C.

B. State statutes and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR Part 265 as indicated in Consolidated Checklist C6 (formerly Checklist IV B) which includes the changes made by Revision Checklists 1, 3, 10, 13, 14, 15, 16, 17 E, 17 F, 17 H, 19, 24, 25, 27, 28, 30, 34, 36, 39, 43, 48, 50, 52, 54, 64, 74, 78, 79, 82, 85, 87, 91, 92, 94, 96, 99, 100, 101, 102, 108, 109, 111, 113, 118, 120, 122, 124, 126, 131, 137, 142A, 142B, 142C, 142D, 145, 154, 156, 158, and 163. Specific requirements are as follows:

- (1) State statutes and regulations authorize owners and operators of hazardous waste management facilities that would qualify for interim status under the***

Federal program to remain in operation until a final decision is made on the permit application;

- (2) *State law and regulations authorize continued operation of hazardous waste management facilities provided that owners and operators of such facilities comply with standards at least as stringent as EPA's interim status standards at 40 CFR Part 265; and*
- (3) *State law and regulations assure that any facility qualifying for State interim status continues to qualify for Federal interim status.*

Federal Authority: RCRA §3005(e); 40 CFR Part 265, as amended January 28, 1983 (48 FR 3977), November 22, 1983 (48 FR 52718), November 21, 1984 (49 FR 46094), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 23, 1985 (50 FR 16044), April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), May 2, 1986 (51 FR 16422), May 28, 1986 (51 FR 19176), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), March 19, 1987 (52 FR 8704), July 8, 1987 (52 FR 25760), November 18, 1987 (52 FR 44314), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), August 14, 1989 (54 FR 33376), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), December 23, 1991 (56 FR 66365), January 29, 1992 (56 FR 3462), February 18, 1992 (56 FR 5859), March 6, 1992 (57 FR 8086), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 16, 1992 (57 FR 42832), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), August 31, 1993 (58 FR 46040), March 4, 1994 (59 FR 13891), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932), February 12, 1997 (62 FR 6622), June 13, 1997 (62 FR 32452), and December 8, 1997 (62 FR 64636).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1), (6) & (7), 6018.105(a), 6018.403, 6018.404(a) and 6018.1001.

25 Pa. Code Chapter 265a (except Subchapter H), effective May 1, 1999.

Remarks of the General Counsel

Under 35 P.S. §§ 6018.102, 6018.104(1), (6) & (7), 6018.105(a) and 6018.403, Pennsylvania has the authority to regulate storage, treatment and disposal facilities and to require compliance with facility standards. The two types of hazardous waste management facilities which are affected by the interim status provisions of the SWMA and the regulations adopted thereunder are: (1) those disposal

and treatment facilities which were permitted under the statute which was the predecessor for Act 97, and (2) those storage and treatment facilities which had no permits and needed none until the enactment of Act 97. 35 P.S. § 6018.404(a) provides an "interim status" under which newly regulated facilities can lawfully continue operating without a permit until final departmental action on their permit applications, and 35 P.S. § 6018.1001 allows for the continued operation of treatment and disposal facilities which already have permits issued under Act 97's predecessor until the old permits are modified, amended, or revoked. 25 Pa. Code Chapter 265a contains interim status standards for both newly regulated and previously permitted treatment and disposal facilities. Owners and operators of such facilities must comply with the Chapter 265a standards until they obtain a permit under Act 97.

With the exception of the Commonwealth's financial responsibility requirements, the Commonwealth's regulations in Chapter 265a are largely identical or equivalent to 40 CFR Part 265, as indicated in Consolidated Checklist C6 in Subsection V.F. Pennsylvania's financial responsibility requirements are discussed in detail in Subsection V.C.

C. State statutes and regulations establish financial responsibility requirements during facility operation and all closure and post-closure activities to assure that money will be available for closure and post-closure monitoring and maintenance which are equivalent to and no less stringent than 40 CFR 264 and 265.

Federal Authority: RCRA § 3004(6) (42 U.S.C. § 6924(t)), 40 CFR Part 264 Subpart H, 40 CFR Part 265, Subpart H.

Citation of Laws and Regulations: Date of Enactment and Adoption

35 P.S. §§ 6018.403(b)(11), 6018.502(e), 6018.505 and 6018.506.

25 Pa. Code Chapter 264a, Subchapter H and Chapter 265a, Subchapter H, effective May 1, 1999.

Remarks of the General Counsel

The financial responsibility regulations (25 Pa. Code Subchapter H of Chapters 264a and 265a) implement 35 P.S. §§ 6018.403(b)(11), 6018.505 and 6018.506 by establishing bonding requirements and sudden and non-sudden liability requirements. The bond includes assurances that the operator will fulfill its responsibilities for monitoring, post-closure care and remedial measures. In addition, 35 P.S. § 6018.506 authorizes the Department to adopt regulations that provide for proof of financial responsibility for owners or operators of hazardous waste storage, treatment, and disposal facilities as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences, and nonsudden and accidental occurrences, and to comply with section 3004 of RCRA. Proof of general public liability insurance is also required by 35 P.S. § 6018.502(e). The financial requirements apply to all hazardous waste facilities which receive a permit and interim status facilities. Federal facilities are also subjected to the bonding requirement because Act 97 expressly includes Federal facilities in its regulatory scheme, and 35 P.S. § 6018.505 does not exempt Federal facilities from the bond requirement.

Other than renumbering and the removal of redundant provisions, Pennsylvania's financial assurance requirements have not changed since its base program and are generally equivalent to the Federal requirements. The Commonwealth, however, has adopted changes to its financial assurance requirements that are consistent with changes made to the Federal base program requirements including those addressed in Revision Checklists 24 and 113. Pennsylvania now incorporates by reference the Federal definitions for financial requirements in 40 CFR 264.141 and 265.141, the liability requirements in 40 CFR 264.147 and 265.147, the financial test and corporate guarantee provisions in 40 CFR 264.143(f) and 265.143(e), and cost estimate provisions in 40 CFR 264.142, 264.144, 265.142, and 265.144. Like the Federal code, the Commonwealth exempts Federal and state facilities from the liability requirements.

Note that Pennsylvania is not applying for authorization for the corrective action program with this authorization package. However, the Commonwealth has authority to assure financial responsibility for corrective action at 35 P.S. §§ 6018.505 and 6018.506.

The Department's regulations, in accordance with 35 P.S. § 6018.505, allow only collateral and surety bonds. They apply to all facility owner/operator/permittees and allow no self-bonding, trust funds or self-insurance permitted under Federal regulations. Because the SWMA requires bonding, the Commonwealth has not adopted by reference the Federal provisions for financial mechanisms at 40 CFR 264.143(a)-(e) and (g)-(i), 264.145(a)-(e) and (g)-(i), 264.151, 265.143(a)-(d) and (f)-(h), and 265.145(a)-(d) and (f)-(h). 35 P.S. § 6018.505 requires operators of facilities to submit a bond to the Department. Under 25 Pa. Code § 264a.154(d) and 265a.154(d), an owner or operator of a new facility must submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal. This Commonwealth provision is equivalent to the Federal provisions at 40 CFR 264.143(a)(1), 264.143(b)(1), 264.143(c)(1), 264.143(d)(1), 264.143(e)(1) and 264.143(f)(4).

Pennsylvania has identical requirements to the Federal code regarding:

1. the definitions at 40 CFR 264.141 and 265.141;
2. cost estimates for closure and post-closure at 40 CFR 264.142 and 265.142 and 264.144 and 265.144;
3. liability requirements at 40 CFR 264.147 and 265.147; and
4. requirements for incapacity of owners or operators, guarantors, or financial institutions at 40 CFR 264.148 and 265.148.

In addition, at 25 Pa. Code §§ 264a.156(e) and 265a.156(e), the Commonwealth requires that bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) and 265.143(e) (relating to financial test and corporate guarantee for closure), and 40 CFR 264.145(f) and 265.145(e) (relating to financial assurance for post-closure care). However, instead of the requirements at 40 CFR 264.143(f)(10)(i), 264.145(f)(11)(i), 265.143(e)(10)(i) and 265.145(e)(11)(i), Pennsylvania requires owners and operators to comply with the provisions at 25 Pa. 264a.168 and 265a.168 (relating to replacement of bond).

The equivalency between the Commonwealth's provisions for financial mechanisms and the Federal requirements is documented in Appendix 4. The analysis is based on EPA's guidance document entitled "Equivalency of State Financial Responsibility Mechanisms". A description of the differences between the Commonwealth's regulations and the Federal regulations is presented below.

Commonwealth Authority to Manage Funds

The most noticeable difference between the Federal and state programs is the lack of a standby trust in the Commonwealth program. The Commonwealth has the authority to collect, hold and disburse financial assurance funds under 35 P.S. § 6018.505 (Bonds) and 35 P.S. § 6018.701 (Solid Waste Abatement Fund), and therefore does not need a standby trust fund as used in the Federal program. The provisions at 25 Pa. Code §§ 264a.168(b) and 265a.168(b) further describe the procedures for bond forfeiture, collection and deposit of funds in the Solid Waste Abatement Fund.

The Commonwealth is authorized under 25 Pa. Code §§ 264a.168(a)(2)-(3), 25 Pa. Code §§ 265a.168(a)(2)-(3) and 35 P.S. § 6018.505(d) to forfeit bonds for, inter alia, failure to properly conduct closure and post-closure activities. Under 25 Pa. Code §§ 264a.168(b)(3)-(5) and 25 Pa. Code §§ 265a.168(b)(3)-(5), the Department can forfeit all bond amounts, collect on the bond, deposit all money from defaulted bonds in the Solid Waste Abatement Fund, and under 35 P.S. § 6018.701, disburse the amounts needed for the Commonwealth to effectuate proper closure and post-closure care.

Financial Responsibility Forms and Instruments

The financial responsibility forms are binding and enforceable by the Department. 25 Pa. Code §§ 264a.154 and 265a.154 authorize the Department to prescribe and furnish the forms for bond instruments, copies of which are found in Part VIII, section C of the Program Description together with all other guidelines, forms and specimens discussed in this part. The bond forms produced are as follows:

1. 2510-FM-LRWM0079A Hazardous Waste Site Closure of Post-Closure Corporate Guarantee Bond
2. 2510-FM-LRWM0101A Corporate Guarantee Bond for a Waste Management Facility
3. 2510-FM-LRWM0101 Collateral Bond for a Waste Management Facility
4. 2510-FM-LRWM0102 Collateral Bond Endorsement - Additional Bond
5. 2510-FM-LRWM0103 Collateral Bond Endorsement - Change of Ownership
6. 2510-FM-LRWM0104 Collateral Bond Endorsement - Replacement Bond
7. 2510-FM-LRWM0075 Collateral Bond Endorsement - Phased Deposit Installment
8. 2510-FM-LRWM0106 Collateral Bond Endorsement - Partial Replacement bond
9. 2510-FM-LRWM0107 Assignment of Certificate of Deposit - Non-Certificate Account
10. 2510-FM-LRWM0108 Schedule for Deposit of Collateral
11. 2510-FM-LRWM0111 Surety Bond for a Waste Management Facility
12. 2510-FM-LRWM0112 Surety Bond Endorsement - Additional Bond
13. 2510-FM-LRWM0113 Surety Bond Endorsement - Change of Ownership
14. 2510-FM-LRWM0114 Surety Bond Endorsement - Replacement Bond
15. 2510-FM-LRWM0257 Phased Deposit Surety Bond
16. 2510-FM-LRWM0259 Phased Deposit Endorsement and Schedule for Deposit
17. 2510-FM-LRWM0258 Phased Deposit Surety Bond - Installment Endorsement

Additionally, the Department has developed certain guideline forms to assist operators in submitting collateral to satisfy collateral bond requirements. These guideline forms are as follows:

1. 2510-FM-LRWM0109 Instructions for Submission of Certificates of Deposit
2. 2510-FM-LRWM0110 Guidelines for Submission of Negotiable Government Securities

The Department has also developed a specimen for use by operators and banks in developing a format for an irrevocable letter of credit acceptable under the financial responsibility regulations.

Pennsylvania incorporates by reference the Federal liability requirements provisions at 40 CFR 264.147 and 265.147 and therefore it is the intent of the Commonwealth to use the associated Federal financial instruments in 40 CFR 264.151. In addition, the Department has developed one certification form and two (2) specimen forms. The forms are as follows:

1. 2510-FM-LRWM0078 Hazardous Waste Facility Certificate of Liability Insurance
2. Wording for Hazardous Waste Facility Certificate of Liability Insurance
3. Wording for Hazardous Waste Facility Liability Endorsement.

The above forms must be used by the applicant and must be completely filled out in order to be approved by the Department. The collateral bond instruments described above will be executed on behalf of the permittee. The surety bond instruments described above will be executed on behalf of the permittee and the appropriate surety company licensed to do business in Pennsylvania. The insurance certificate and endorsement described above will be executed by an authorized representative of the insurer.

Procedures for Review of Instruments

Following execution, the above bond and insurance forms will be reviewed according to established Commonwealth procedures. For surety bond instruments, this includes a certification by the Pennsylvania Department of Insurance that the subject surety company and its agent are duly licensed in the Commonwealth to write fidelity and surety insurance; that the bond does not exceed the ten percent (10%) limitation as to capital and surplus of the surety, set forth in 40 P.S. § 832; and that the signatures on behalf of the surety and its agent appear to be in the original. For all surety and collateral bond instruments, this includes a review for legality and form by the Office of General Counsel and the Attorney General's Office or their designated representatives within the Commonwealth. For the insurance certificate and endorsement, this includes a review by the Department to determine if the coverage provided satisfies the insurance coverage required of the permittee or permit applicant under the financial responsibility regulations at 40 CFR 264.147 and 265.147 as adopted by reference at 25 Pa. Code §§ 264a.1(a) and 265a.1(a), respectively. The bond and the liability coverage instruments must be fully effective and have been approved by the Department prior to construction or operation of the facility. Under 25 Pa. Code §§ 264a.153(b) and 265a.153(b), the Department will not issue a new, revised, amended, modified or renewed permit unless the applicant files with the Department a bond payable to the Department and approved by the Department.

The amount of the bond must equal the total estimated cost to the Commonwealth of completing all applicable closure and post-closure requirements in accordance with 35 P.S. § 6018.505 and 25 Pa. Code §§ 264a.160(a) and 265a.160(a). The estimated cost must be based on the owner's

or operator's written estimates submitted under 40 CFR 264.142 and 264.144 (as incorporated by reference at 25 Pa. Code § 264a.1(a)) and 40 CFR 265.142 and 265.144 (as incorporated by reference at 25 Pa. Code § 265a.1(a)). The Department is required under 25 Pa. Code §§ 264a.153(d) and 265a.153(d) to review the submitted bond within one year and determine whether to approve the bond or require deposit of additional bond amounts under 25 Pa. Code §§ 264a.162 and 265a.162 (relating to bond amount adjustments). The bond and liability coverage instruments are binding on the parties executing such instruments and are enforceable pursuant to, and with the same force as, the financial responsibility regulations. No facility covered by 25 Pa. Code Chapters 264a or 265a may operate without fully effective bond and liability coverage instruments.

Surety Bonds

A documentation of how the Commonwealth's program satisfies the surety bond requirements of 40 CFR 264.143(c)(4) to (7) and 264.145(c)(4) to (7) is provided in Appendix 4. These two Federal regulations are identical in content; 40 CFR 264.143 provides surety bond requirements for closure bonds and 40 CFR 264.145 provides such requirements for post-closure care bonds. The Commonwealth addresses all surety bonds together without regard to whether they assure closure or post-closure care.

Condition 7 of the bond instrument provides the requirement of 40 CFR 264.143(c)(4)(i) and 264.145(c)(4)(i), while 25 Pa. Code § 264a.155(c) of the regulations provides for alternative financial assurance as specified in 40 CFR 264.143(c)(4)(ii) and 264.145(c)(4)(ii). The bond instrument and 25 Pa. Code §§ 264a.155(f) and 265a.155(f) bind the surety by making the permittee and surety individually and jointly liable for closure or post-closure activities covered by the bond, which satisfies 40 CFR 264.143(c)(5) and 264.145(c)(5).

40 CFR 264.143(c)(6) and 264.145(c)(6) require the penal sum of the bond to be in an amount at least equal to the current closure cost or post-closure cost estimate. Under 25 Pa. Code § 264a.160(b), the cost estimates are based on the owner's or operator's written estimate submitted under 40 CFR 264.142 and 264.144. The Commonwealth's provision at 25 Pa. Code § 264a.160(a) requires the penal sum to equal the cost to the Commonwealth of performing closure and post-closure activities in place of the permittee and therefore may exceed the cost of closure and post-closure activities if performed by the permittee.

40 CFR 264.143(c)(7) and 264.145(c)(7) require the owner or operator to adjust the penal sum of the bond within 60 days of an increase in the current closure or post-closure cost estimate or obtain alternate financial assurance to cover the increase. 25 Pa. Code § 264a.163 requires the owner or operator to post additional bond within 60 days of a request by the Department.

Closure and Postclosure Certification

25 Pa. Code §§ 264a.166(c) and 265a.166(c) state that "[c]losure or postclosure certification shall not take effect until 1 year after receipt of the Department's determination." The major purpose of this provision is to assure insurance coverage for one year after a determination has been made to issue a closure or postclosure certification. Pennsylvania, like the Federal code at 40 CFR 264.147(e) and 265.147(e) as incorporated by reference at 25 Pa. Code §§ 264a.1(a) and 265a.1(a) (relating to period coverage), requires continuous insurance coverage until the Department approves the certification submitted by the owner or operator and an independent professional engineer that final

closure has been completed in accordance with the approved closure plan. The one year waiting period before closure certification becomes effective provides a period during which the public is fully protected to discover defects in the closure or adverse environmental impacts.

25 Pa. Code §§ 264a.166(d) and 265a.166(d) also state that:

[t]he closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the permittee shall remain liable.

The purpose of this provision is to preclude the use of a closure or postclosure certification as a defense to an action to enforce liability, bonding or regulatory requirements. The Department is not precluded from pursuing an action to obtain compliance or to abate environmental harm whether or not the conditions or noncompliance existed at the time of certification or developed later. Closure or postclosure certification does not automatically release bond liability; a request for release of bond must be made in accordance with 25 Pa. Code §§ 264a.165 and 265a.165 (relating to bond release).

Bond Forfeiture

25 Pa Code §§ 264a.154(c) and 265a.154(c) provide that bonds "are ... conditioned upon the faithful performance" of the requirements of various acts, regulations, permits and orders. The question focuses upon the effect upon the bond of such a violation.

The Department has authority under 35 P.S. § 6018.505(d) to forfeit a bond "if the operator abandons the operation of a ... hazardous waste storage, treatment or disposal facility for which a permit is required ... or if the permittee fails or refuses to comply with the requirements of this act in any respect for which liability has been charged on the bond." The Department's regulations interpret this authority to include relevant environmental statutes, and the regulations, permits and orders issued thereunder. Thus, there is broad authority for the Department to declare the bond forfeit for violations related to proper closure or post-closure care of the facility or any other respect "for which liability has been charged on the bond." Thus if the Department forfeited a bond it would have to be for a violation relevant to the bonded liability.

In practice, the Department will not forfeit a bond if the facility does not have to be closed as a result of the violation. The bonds are site-specific, so a forfeiture could only occur for violation at the bonded facility site. If the facility is ordered to close and the permittee does not proceed to undertake his closure and post-closure care responsibilities, then the bond will be forfeited, the amount collected and put into the Solid Waste Abatement Fund, and the proceeds applied to proper closure and post-closure care. The Commonwealth oversees the activities if the bond is forfeited.

If the facility need not close the Commonwealth will keep the bond intact and proceed with civil penalties or other appropriate enforcement action. In the event that the Commonwealth did forfeit a bond, but allowed continued operation, the Department would demand, and the permittee must supply, additional alternative financial assurance. 25 Pa. Code §§ 264a.153, 264a.162(a)(4), 264a.163, 265a.153, 265a.162(a)(4) and 265a.163.

Surety Bound to Conditions in Regulations

In order to ensure that the conditions for cancellation of surety bonds found in 25 Pa. Code §§ 264a.155(c) and 265a.155(c) are binding on the surety company, the bond forms used in the Commonwealth include a statement that surety companies must abide by the "rules and regulations promulgated under the Act" which includes conditions in 25 Pa. Code §§ 264a.155(c) and 265a.155(c).

D. Consolidated Checklist C5 — 40 CFR Part 264 as of June 30, 1998 and Commonwealth Analogs

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 264a the following provisions limit the applicability of the substitution of terms: §§ 264a.12 and 264a.147. No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C5

**Standards for Owners and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities
40 CFR Part 264 as of July 1, 1998**

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE

SUBPART A - GENERAL

Purpose, scope and applicability	264.1 except 264.1(b), (f), (g)(2), (g)(6), and (g)(11)	264a.1(a)	X			
Applies to all owners and operators of TSDFs with exceptions	264.1(b)	264a.1(b)(2)	X			

Legal Statement Comment: The Commonwealth's provision at § 264a.1(b)(2) is equivalent to the Federal analog and clarifies that the scope of Chapter 264a is limited only to the extent that Pennsylvania regulations specify.

Post-authorization rulemaking	264.1(f)	No analog per 264a.1(b)(1)	Not adopted by the Commonwealth because this provision exempts facilities located in authorized States			
Recyclable materials	264.1(g)(2)	264a.1(b)(3)	D			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: The Commonwealth's analog to 40 CFR 264.1(g)(2) does not contain an analogous reference to 40 CFR Part 279 because Pennsylvania has not adopted the used oil revisions to the Federal hazardous waste program. The Commonwealth is not seeking authorization at this time for a used oil program. The Commonwealth has included a reference to its permit by rule provisions in § 270a.60 which apply to hazardous waste treatment that occurs prior to the actual reclamation or recycling process.

Elementary neutralization units as defined in 260.10; compliance with 264.17(b) if owner or operator is diluting hazardous ignitable wastes or reactive wastes to remove the characteristic before land disposal	264.1(g)(6)	No analog per 264a.1(b)(4)			X	
--	-------------	----------------------------	--	--	---	--

Legal Statement Comment: In § 264a.1(b)(4), the Commonwealth's regulations exclude 40 CFR 264.1(g)(6) from the incorporation by reference. The Commonwealth does not exempt elementary neutralization units or wastewater treatment units from the permit requirement. Owners or operators of such units may satisfy the permit requirement by complying with the permit by rule provisions in § 270a.60. This makes the Commonwealth's program more stringent than the Federal program.

universal waste handlers and transporters handling the listed universal wastes are subject to Part 273 rather than Part 264	264.1(g)(11)	264a.1(a) 264a.1(b)(5)	D			
---	--------------	---------------------------	---	--	--	--

Legal Statement Comment: The additional provision at § 264a.1(b)(5) clarifies that Pennsylvania may have additional universal wastes not addressed in 40 CFR Part 273. At this time, the Commonwealth has not adopted any additional universal wastes.

[Reserved]	264.2	264a.1(a)	X			
Relationship to interim status standards	264.3	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Imminent hazard action	264.4	264a.1(a)	X			

SUBPART B - GENERAL FACILITY STANDARDS

Applicability	264.10	264a.1(a)	X			
Identification number	264.11	264a.1(a)	X			
Prohibition on accepting waste from transporter without an ID number and a license.	No Federal analog in 264.11	264a.11				X

Legal Statement Comment: The Federal code does not contain an analog to this prohibition. Licensing of hazardous waste transporters is beyond the scope of the Federal program.

Required notices for imports of hazardous waste	264.12	264a.1(a) 264a.12	X			
General waste analysis	264.13	264a.1(a)	X			
Notification prior to acceptance of new waste streams	No Federal analog in 264.13	264a.13			X	

Legal Statement Comment: Pennsylvania's program is more stringent because it requires an owner or operator of a TSD facility to notify the Department before it accepts a new waste stream. The notification must include information that is specified in the permit. Existing permitted facilities are required to seek preapproval from the Department before accepting new waste streams until the permit is modified to include facility-specific notification criteria.

Security	264.14	264a.1(a)	X			
General inspection requirements	264.15	264a.1(a)	X			
Construction inspection requirements	No Federal analog in 264.15	264a.15			X	

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a facility to the Department for approval. The schedule must provide for inspection and approval by the Department of each phase of construction. This requirement is more stringent than the Federal program.

Personnel training	264.16	264a.1(a)	X			
General requirements for ignitable, reactive, or incompatible wastes	264.17	264a.1(a)	X			
Location standards	264.18	264a.1(a)	X			
Siting requirements	No Federal analog	264a.18 Chapter 269a			X	X

Legal Statement Comment: Hazardous waste management facilities are subject to the siting requirements in Chapter 269a which are either more stringent or beyond the scope of the Federal program.

Construction quality assurance program	264.19	264a.1(a)	X			
--	--------	-----------	---	--	--	--

SUBPART C - PREPAREDNESS AND PREVENTION

Applicability	264.30	264a.1(a)	X			
Design and operation of facility	264.31	264a.1(a)	X			
Required equipment	264.32	264a.1(a)	X			
Testing and maintenance of equipment	264.33	264a.1(a)	X			
Access to communications or alarm system	264.34	264a.1(a)	X			
Required aisle space	264.35	264a.1(a)	X			
[Reserved]	264.36	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities
40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALT H CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Arrangements with local authorities	264.37	264a.1(a)	X			

SUBPART D - CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Applicability	264.50	264a.1(a)	X			
Purpose and implementation of contingency plan	264.51	264a.1(a)	X			
Content of contingency plan	264.52	264a.1(a)	X			
Copies of contingency plan	264.53	264a.1(a)	X			
Amendment of contingency plan	264.54	264a.1(a)	X			
Emergency coordinator	264.55	264a.1(a)	X			
Emergency procedures	264.56 except (d)	264a.1(a)	X			
Notification of the Department	264.56(d)	264a.1(a) 264a.56			X	

Legal Statement Comment: The Commonwealth is more stringent as it requires an emergency coordinator to immediately notify both the Department and the National Response Center as part of the emergency procedures.

SUBPART E - MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Applicability	264.70	264a.1(a)	X			
Use of manifest system	264.71 except (a)	264a.1(a)	X			
Department approval of manifest forms	264.71(a)	264a.1(a) 264a.71			X	

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: At § 264a.71(1), the Commonwealth prohibits a facility from accepting waste from a transporter unless the waste is accompanied by the Commonwealth manifest form or another form approved by the Department, unless a manifest is not required by 40 CFR 262.20(e). The Federal code does not prohibit a facility from accepting unmanifested waste even when a manifest is required by 40 CFR 262.20. At § 264a.71(2), the Commonwealth requires that copies of the manifest be sent to the Department and to the generator State, as required, within 30 days of the delivery. The Federal code only requires that the manifest be sent to the generator within 30 days of the delivery. These requirements make the Commonwealth's program more stringent than the Federal program.

Manifest discrepancies	264.72	264a.1(a)	X			
Operating record	264.73	264a.1(a)	X			
Availability, retention, and disposition of records	264.74	264a.1(a)	X			
Biennial report	264.75	264a.1(a) 264a.75	D			

Legal Statement Comment: The Commonwealth clarifies in § 264a.75 that the biennial report must be submitted on EPA form 8700-13B, as modified by the Department.

Unmanifested waste report	264.76	264a.1(a)	X			
Additional reports	264.77	264a.1(a)	X			
Hazardous waste management fees; documentation; penalties; administration fees	No Federal analogs	264a.78 - 264a.83				X

Legal Statement Comment: Pennsylvania requires facilities to pay hazardous waste management fees and administration fees. Such fees are beyond the scope of the Federal program.

SUBPART F - RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Applicability	264.90	264a.1(a)	X			
Required programs	264.91	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Ground-water protection standard	264.92	264a.1(a)	X			
Hazardous constituents	264.93	264a.1(a)	X			
Concentration limits	264.94	264a.1(a)	X			
Point of compliance	264.95	264a.1(a)	X			
Compliance period	264.96	264a.1(a)	X			
General ground-water monitoring requirements	264.97	264a.1(a)	X			
Uniform recordkeeping and reporting requirements	No Federal analog in 264.97	264a.97			X	

Legal Statement Comment: At § 264a.97(1), Pennsylvania requires that facilities keep records of analyses and evaluations of groundwater quality, surface elevations and flow rate and direction determinations required under 40 CFR Part 264, Subpart F. At § 264a.97(2), the Commonwealth's regulations require facilities to provide a written report to the Department containing specific information gathered as part of a groundwater monitoring program developed to satisfy 40 CFR 264.98, 264.99, or 264.100. At § 264a.97(3), the Commonwealth requires that information be reported pursuant to § 264a.97(2) and 40 CFR 264.97, at a point established under 40 CFR 264.95 and in a form necessary for the determination of statistically significant increases under 40 CFR 264.98. These monitoring and reporting requirements are authorized in the Federal program by the incorporated Federal regulations found in 40 CFR 264.91 and 264.97-264.99. However, the Federal regulations authorize these requirements through permit conditions rather than through specific regulatory requirements. The Commonwealth's seasonal, climatological and hydrological features would make it necessary to require facilities to conduct the same type of groundwater monitoring and reporting. Therefore, Pennsylvania has chosen to require compliance with these monitoring and reporting standards by regulation in § 264a.97 rather than by permit condition pursuant to 40 CFR 264.91 and 264.97-264.99.

Detection monitoring program	264.98	264a.1(a)	X			
Compliance monitoring program	264.99	264a.1(a)	X			
Corrective action program	264.100	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Corrective action for solid waste management units	264.101	264a.1(a)	X			

Legal Statement Comment: The Commonwealth has adopted the corrective action provisions in 40 CFR 264.101; however, they will not take effect until EPA authorizes Pennsylvania for the corrective action program. The Commonwealth is not seeking authorization for corrective action at this time.

SUBPART G - CLOSURE AND POST-CLOSURE

Applicability	264.110	264a.1(a)	X			
Closure performance standard	264.111	264a.1(a)	X			
Closure plan; amendment of plan	264.112	264a.1(a)	X			
Closure; time allowed for closure	264.113	264a.1(a)	X			
Disposal or decontamination of equipment, structures and soils	264.114	264a.1(a)	X			
Certification of closure	264.115	264a.1(a) 264a.115	D			

Legal Statement Comment: A minor change has been made to the incorporation by reference of 40 CFR 264.115. The Federal analog references the provision at 40 CFR 264.143(i) (relating to the release of an owner or operator from the financial assurance requirements). Pennsylvania does not incorporate by reference 40 CFR 264.143(i) because the Federal provision does not provide a mechanism for the release of closure bonds. Therefore, the owner or operator must satisfy § 264a.166 instead of 40 CFR 264.143(i). The change made in § 264a.115 clarifies that Commonwealth-specific procedures are required to certify closure.

Survey plat	264.116	264a.1(a)	X			
Post-closure care and use of property	264.117	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Post-closure plan; amendment of plan	264.118	264a.1(a)	X			
Post-closure notices	264.119	264a.1(a)	X			
Certification of completion of post- closure care	264.120	264a.1(a) 264a.120	D			

Legal Statement Comment: A minor change has been made to the incorporation by reference of 40 CFR 264.120. The Federal analog references the provision at 40 CFR 264.145(i) (relating to the release of an owner or operator from the financial assurance requirements). Pennsylvania does not incorporate by reference 40 CFR 264.145(i) because the Federal provision does not provide a mechanism for the release of post-closure bonds. Therefore, the owner or operator must satisfy § 264a.166 instead of 40 CFR 264.145(i). The change made in § 264a.120 clarifies that Commonwealth-specific procedures are required to certify closure.

SUBPART H - FINANCIAL REQUIREMENTS

Applicability	264.140	264a.1(a)	X			
Definition of terms as used in this subpart	264.141	264a.1(a)	X			
Definitions of "applicant", "financial institutions", "surety bond", and "surety company"	No Federal analogs in 264.141	264a.141	D			

Legal Statement Comment: For clarity, Pennsylvania defines these terms which are used both in the Federal code and in the Commonwealth's regulations; the definitions are consistent with the use of these terms in the Federal code.

Definition of "collateral bond"	No Federal analogs in 264.141	264a.141	D			
------------------------------------	-------------------------------------	----------	---	--	--	--

Legal Statement Comment: The Commonwealth defines this term which is unique to special bonding requirements described in detail in the body of the Legal Statement.

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Definition of "final closure"	No Federal analog in 264.141	264a.141	D			

Legal Statement Comment: Pennsylvania requires that the same instrument guarantee both closure and post-closure care; thus, the definition of "final closure" has been changed as it applies to the financial assurance requirements in order to refer to completion of both closure and post-closure care requirements.

Cost estimate for closure	264.142	264a.1(a)	X			
Financial assurance for closure	264.143 except (f)	No analogs per 264a.143	The Commonwealth does not incorporate by reference the provisions of 40 CFR 264.143 (related to financial assurance of closure) with the exception of 40 CFR 264.143(f). Instead, the Commonwealth has unique bonding requirements which are discussed in detail in the body of the Legal Statement.			
Financial test and corporate guarantee for closure	264.143(f) except (f)(10) (i)	264a.1(a) 264a.143 264a.156(e)	D			

Legal Statement Comment: In § 264a.156(e), the Commonwealth requires that bonds pledging a corporate guarantee for closure (which includes post-closure care for purposes of the financial assurance requirements) be subject to 40 CFR 264.143(f) and 264.145(f) with the exception noted below.

Failure to perform final closure in accordance with closure plan and permit	264.143(f)(10) (i)	264a.156(e) 264a.168	D			
--	-----------------------	-------------------------	---	--	--	--

Legal Statement Comment: The Commonwealth has unique requirements for bond forfeiture that apply in the situation where the owner or operator fails to perform final closure in accordance with applicable laws and permit conditions. See the detailed discussion of Pennsylvania's bonding requirements in the body of the Legal Statement.

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Cost estimate for post-closure care	264.144	264a.1(a)	X			
Financial assurance for post-closure care	264.145 except (f)	No analog per 264a.145	The Commonwealth does not incorporate by reference the provisions of 40 CFR 264.145 (related to financial assurance of post-closure care) with the exception of 40 CFR 264.145(f). Instead, the Commonwealth has unique bonding requirements which are discussed in detail in the body of the Legal Statement.			
Financial test and corporate guarantee for post-closure care	264.145(f) except (f)(11)(i)	264a.1(a) 264a.145 264a.156(e)	D			
Legal Statement Comment: In § 264a.156(e), the Commonwealth requires that bonds pledging a corporate guarantee for closure (which includes post-closure care for purposes of the financial assurance requirements) be subject to 40 CFR 264.143(f) and 264.145(f) with the exception of 40 CFR 264.143(f)(10)(i) and 264.145(f)(11)(i).						
Failure to perform post-closure care in accordance with post-closure plan and permit	264.145(f)(11)(i)	264a.156(e) 264a.168	D			
Legal Statement Comment: The Commonwealth has unique requirements for bond forfeiture that apply in the situation where the owner or operator fails to perform post-closure care in accordance with applicable laws and permit conditions. See the detailed discussion of Pennsylvania's bonding requirements in the body of the Legal Statement.						
Use of a mechanism for financial assurance requirements of both closure and post-closure care	264.146	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Liability requirements	264.147 except (g)(2) and (i) (4)	264a.1(a)	X			
Legality and enforceability of guarantees and surety bonds	264.147(g)(2) and (i)(4)	264a.1(a) 264a.147	X			
Incapacity of owners or operators, guarantors, or financial institutions	264.148	264a.1(a) 264a.148	X			

Legal Statement Comment: The Commonwealth clarifies that notice must be sent by certified mail to the Department.

Use of state required mechanisms; state assumption of responsibility	264.149 and 264.150	No analogs per 264a.149 and 264a.150	These provisions were not incorporated by reference because they apply solely in the context of the Federal program.			
Wording of the instruments	264.151	No analog per 264a.151	The Commonwealth's regulations do not include the wording of financial instruments. Pennsylvania's financial instruments are discussed in detail in the body of the Legal Statement.			
Bonding requirements	No direct analogs in Subpart H	264a.153 - 264a.169	See the discussion of the Commonwealth's unique bonding requirements in the body of the Legal Statement.			

SUBPART I - USE AND MANAGEMENT OF CONTAINERS

Applicability	264.170	264a.1(a)	X			
Condition of containers	264.171	264a.1(a)	X			
Compatibility of waste with containers	264.172	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Management of containers	264.173	264a.1(a)	X			
Height, width, depth and placement of container groups	No Federal analog in 264.173	264a.173			X	

Legal Statement Comment: Pennsylvania requires that the height, width, and depth of a group of containers must provide a configuration and aisle space to facilitate inspections and unobstructed movement of emergency equipment and personnel. In addition, a 40-foot setback from a building must be maintained for all outdoor storage of reactive or ignitable hazardous waste. The proposed configuration of containers must be included in the permit application. These requirements make the Commonwealth's program more stringent than the Federal program.

Inspections	264.174	264a.1(a)	X			
Containment	264.175	264a.1(a)	X			
Special requirements for ignitable or reactive waste	264.176	264a.1(a)	X			
Special requirements for incompatible wastes	264.177	264a.1(a)	X			
Closure	264.178	264a.1(a)	X			
Air emission standards	264.179	264a.1(a)	X			
Weighing or measuring facilities	No Federal analog in Subpart I	264a.180			X	

Legal Statement Comment: The Commonwealth has included more stringent regulations governing the operation of weighing and measuring facilities, if necessary or when required by the Department.

SUBPART J - TANK SYSTEMS

Applicability	264.190	264a.1(a)	X			
Assessment of existing tank system's integrity	264.191 except (a)	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Compliance date for 264.191 assessment requirements	264.191(a)	264a.1(a) 264a.191	D			

Legal Statement Comment: At § 264a.191, the Commonwealth has modified the incorporation by reference to require compliance with the 40 CFR 264.191 assessment requirements by January 17, 1994. The Federal compliance date is not used because Pennsylvania did not adopt the containment and assessment requirements until after January 12, 1988.

Design and installation of new tank systems or components	264.192	264a.1(a)	X			
Containment and detection of releases	264.193 except (a)	264a.1(a)	X			
Compliance date for 264.193 containment requirements	264.193(a)	264a.1(a) 264a.193	D			

Legal Statement Comment: At § 264a.193, the Commonwealth has modified the incorporation by reference to change the compliance dates for the 40 CFR 264.193 containment requirements. The Federal compliance dates were not used because Pennsylvania did not adopt the containment and assessment requirements until after January 12, 1987.

General operating requirements	264.194	264a.1(a)	X			
Tank labeling requirement	No Federal analog in 264.194	264a.194			X	

Legal Statement Comment: Pennsylvania is more stringent in that owners or operators are required to label tanks. There is no analogous Federal requirement.

Inspections	264.195 except (b)	264a.1(a)	X			
Inspection of tanks not in operation	264.195(b)	264a.1(a) 264a.195			X	

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: The Federal regulations only require inspections once each operating day. The Commonwealth is more stringent by also requiring inspections of tanks every 72 hours when not operating if waste remains in the tank or tank system components.

Response to leaks or spills and disposition of leaking or unfit-for-use tank systems	264.196	264a.1(a)	X			
Closure and post-closure care	264.197	264a.1(a)	X			
Special requirements for ignitable or reactive wastes	264.198	264a.1(a)	X			
Special requirements for incompatible wastes	264.199	264a.1(a)	X			
Air emission standards	264.200	264a.1(a)	X			

SUBPART K - SURFACE IMPOUNDMENTS

Applicability	264.220	264a.1(a)	X			
Design and operating requirements	264.221 except (a) and (c)	264a.1(a)	X			
Design and operating requirements for liners	264.221(a) and (c)	264a.1(a) 264a.221			X	

Legal Statement Comment: The Commonwealth is more stringent at § 264a.221(1) by requiring that surface impoundments subject to 40 CFR 264.221(a) and (c) be designed to maintain a minimum distance of 4 feet between the bottom of the liner and seasonal high water table without the use of artificial or manmade drainage or dewatering systems. In addition, the distance between the top of the subbase and the regional water table must be at least 8 feet. At § 264a.221(2), the Commonwealth allows the Department, upon written application, to grant a variance from this more stringent requirement. The Department cannot grant a variance that is less stringent than the Federal requirements.

Action leakage rate	264.222	264a.1(a)	X			
Response actions	264.223	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
[Reserved]	264.224	264a.1(a)	X			
[Reserved]	264.225	264a.1(a)	X			
Monitoring and inspection	264.226	264a.1(a)	X			
Emergency repairs; contingency plans	264.227	264a.1(a)	X			
Closure and post-closure care	264.228	264a.1(a)	X			
Special requirements for ignitable or reactive waste	264.229	264a.1(a)	X			
Special requirements for incompatible wastes	264.230	264a.1(a)	X			
Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027	264.231	264a.1(a)	X			
Air emission standards	264.232	264a.1(a)	X			

SUBPART L - WASTE PILES

Applicability	264.250	264a.1(a)	X			
Design and operating requirements	264.251 except (a) and (c)	264a.1(a)	X			
Design and operating requirements for liners	264.251(a) and (c)	264a.1(a) 264a.251			X	

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: The Commonwealth is more stringent at § 264a.251(1) by requiring that waste piles subject to 40 CFR 264.251(a) and (c) be designed to maintain a minimum distance of 4 feet between the bottom of the liner and seasonal high water table without the use of artificial or manmade drainage or dewatering systems. At § 264a.251(2), the Commonwealth excludes 40 CFR 264.251(c)(5) from the incorporation by reference because that provision only applies to leak detection systems located below the seasonal high water table. That scenario is not permissible under Pennsylvania law.

Action leakage rate	264.252	264a.1(a)	X			
Response actions	264.253	264a.1(a)	X			
Monitoring and inspection	264.254	264a.1(a)	X			
[Reserved]	264.255	264a.1(a)	X			
Special requirements for ignitable or reactive waste	264.256	264a.1(a)	X			
Special requirements for incompatible wastes	264.257	264a.1(a)	X			
Closure and post-closure care	264.258	264a.1(a)	X			
Special requirements for hazardous wastes F020, F021, F022, F023, F026 and F027	264.259	264a.1(a)	X			

SUBPART M - LAND TREATMENT

Applicability	264.270	264a.1(a)	X			
Treatment program	264.271	264a.1(a)	X			
Treatment demonstration	264.272	264a.1(a)	X			
Design and operating requirements	264.273	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Specific application requirements	No Federal analog in 264.273	264a.273			X	

Legal Statement Comment: The Federal regulations allow for variation of application requirements in the facility permit. The Commonwealth is more stringent, because in § 264a.273 specific minimum application requirements have been established by regulation.

[Reserved]	264.274- 264.275	264a.1(a)	X			
Food-chain crops	264.276	264a.1(a) 264a.276			X	

Legal Statement Comment: The Federal code contains a strict prohibition on growing food-chain crops other than for animal feed if cadmium is contained in wastes applied to the treatment zone. Otherwise, the permit will establish the specific food chain crops which may be grown. The provision at § 264a.276 prohibits growing tobacco or crops intended for direct human consumption on hazardous waste land treatment facilities, and so is more stringent.

[Reserved]	264.277	264a.1(a)	X			
Unsaturated zone monitoring	264.278	264a.1(a)	X			
Recordkeeping	264.279	264a.1(a)	X			
Closure and post-closure care	264.280	264a.1(a)	X			
Special requirements for ignitable or reactive waste	264.281	264a.1(a)	X			
Special requirements for incompatible wastes	264.282	264a.1(a)	X			
Special requirements for hazardous wastes F020, F021, F022, F023, F026 and F027	264.283	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

SUBPART N - LANDFILLS

Applicability	264.300	264a.1(a)	X			
Design and operating requirements	264.301 except (a), (c), and (l)	264a.1(a)	X			
Design and operating requirements for liners	264.301(a) and (c)	264a.1(a) 264a.301(1) and (2)			X	

Legal Statement Comment: The Commonwealth is more stringent at § 264a.301(1) by requiring that landfills subject to 40 CFR 264.301(a) and (c) be designed to maintain a minimum distance of 4 feet between the bottom of the liner and seasonal high water table without the use of artificial or manmade drainage or dewatering systems. In addition, the distance between the top of the subbase and the regional water table must be at least 8 feet. At § 264a.301(2), the Commonwealth allows the Department, upon written application, to grant a variance from this more stringent requirement. The Department cannot grant a variance that is less stringent than the Federal requirements.

Landfills located in Alabama	264.301(l)	No analog per 264a.301(3)	This provision is excluded from the incorporation by reference because it is not applicable in the Commonwealth.			
Action leakage rate	264.302	264a.1(a)	X			
Monitoring and inspection	264.303	264a.1(a)	X			
Response actions	264.304	264a.1(a)	X			
[Reserved]	264.305-264.308	264a.1(a)	X			
Surveying and recordkeeping	264.309	264a.1(a)	X			
Closure and post-closure care	264.310	264a.1(a)	X			
[Reserved]	264.311	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI N- GENT	BROADER IN SCOPE
Special requirements for ignitable or reactive waste	264.312	264a.1(a)	X			
Special requirements for incompatible wastes	264.313	264a.1(a)	X			
Special requirements for bulk and containerized liquids	264.314	264a.1(a)	X			
Special requirements for containers	264.315	264a.1(a)	X			
Disposal of small containers of hazardous waste in overpacked drums (lab packs)	264.316	264a.1(a)	X			
Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027	264.317	264a.1(a)	X			

SUBPART O - INCINERATORS

Applicability	264.340	264a.1(a)	X			
Waste analysis	264.341	264a.1(a)	X			
Principal organic hazardous constituents (POHCs)	264.342	264a.1(a)	X			
Performance standards	264.343	264a.1(a)	X			
Hazardous waste incinerator permits	264.344	264a.1(a)	X			
Operating requirements	264.345	264a.1(a)	X			
[Reserved]	264.346	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities
40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Monitoring and inspections	264.347	264a.1(a)	X			
[Reserved]	264.348- 264.350	264a.1(a)	X			
Closure	264.351	264a.1(a)	X			

SUBPARTS P-R - [RESERVED]

SUBPART S - CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

Corrective Action Management Units (CAMU) and Temporary Units (TU)	264.552 and 264.553	264a.1(a)	X			
--	------------------------	-----------	---	--	--	--

Legal Statement Comment: These provisions have been included in the incorporation by reference; however, they will not take effect in the Commonwealth until the EPA authorizes Pennsylvania's corrective action program. Pennsylvania is not currently seeking authorization for the corrective action program contained in 40 CFR Subpart S.

SUBPARTS T-V - [RESERVED]

SUBPART W - DRIP PADS

Applicability	264.570(a)	264a.570	D			
---------------	------------	----------	---	--	--	--

Legal Statement Comment: At § 264a.570, the Commonwealth has substituted an applicability provision for the Federal provision found at 40 CFR 264.570(a). Pennsylvania defines existing drip pads as those constructed before January 11, 1997. The Federal compliance date is inappropriate because Pennsylvania adopted the drip pad standards after December 6, 1990. The Commonwealth also does not limit the applicability of 40 CFR 264.573(b)(3) because Pennsylvania adopted the drip pad standards after December 24, 1992.

Applicability; specific exceptions	264.570(b) and (c)	264a.1(a)	X			
Assessment of existing drip pad integrity	264.571	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities
40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Design and installation of new drip pads	264.572	264a.1(a)	X			
Design and operating requirements	264.573	264a.1(a)	X			
Inspections	264.574	264a.1(a)	X			
Closure	264.575	264a.1(a)	X			

SUBPART X - MISCELLANEOUS UNITS

Applicability	264.600	264a.1(a)	X			
Environmental performance standards	264.601	264a.1(a)	X			
Monitoring, analysis, inspection, response, reporting, and corrective action	264.602	264a.1(a)	X			
Post-closure care	264.603	264a.1(a)	X			

SUBPARTS Y-Z - [RESERVED]

SUBPART AA - AIR EMISSION STANDARDS FOR PROCESS VENTS

Applicability	264.1030	264a.1(a)	X			
Definitions	264.1031	264a.1(a)	X			
Standards: Process vents	264.1032	264a.1(a)	X			
Standards: Closed-vent systems and control devices	264.1033	264a.1(a)	X			
Test methods and procedures	264.1034	264a.1(a)	X			
Recordkeeping requirements	264.1035	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Reporting requirements	264.1036	264a.1(a)	X			
[Reserved]	264.1037- 264.1049	264a.1(a)	X			
SUBPART BB - AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS						
Applicability	264.1050	264a.1(a)	X			
Definitions	264.1051	264a.1(a)	X			
Standards: Pumps in light liquid service	264.1052	264a.1(a)	X			
Standards: Compressors	264.1053	264a.1(a)	X			
Standards: Pressure relief devices in gas/vapor service	264.1054	264a.1(a)	X			
Standards: Sampling connection systems	264.1055	264a.1(a)	X			
Standards: Open-ended valves or lines	264.1056	264a.1(a)	X			
Standards: Valves in gas/vapor service or in light liquid service	264.1057	264a.1(a)	X			
Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors	264.1058	264a.1(a)	X			
Standards: Delay of repair	264.1059	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Standards: Closed-vent systems and control devices	264.1060	264a.1(a)	X			
Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak	264.1061	264a.1(a)	X			
Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair	264.1062	264a.1(a)	X			
Test methods and procedures	264.1063	264a.1(a)	X			
Recordkeeping requirements	264.1064	264a.1(a)	X			
Reporting requirements	264.1065	264a.1(a)	X			
[Reserved]	264.1066- 264.1079	264a.1(a)	X			

SUBPART CC - AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

Applicability	264.1080	264a.1(a)	X			
Definitions	264.1081	264a.1(a)	X			
Standards: General	264.1082	264a.1(a)	X			
Waste determination procedures	264.1083	264a.1(a)	X			
Standards: Tanks	264.1084	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Standards: Surface impoundments	264.1085	264a.1(a)	X			
Standards: Containers	264.1086	264a.1(a)	X			
Standards: Closed-vent systems and control devices	264.1087	264a.1(a)	X			
Inspection and monitoring requirements	264.1088	264a.1(a)	X			
Recordkeeping requirements	264.1089	264a.1(a)	X			
Reporting requirements	264.1090	264a.1(a)	X			
[Reserved]	264.1091	264a.1(a)	X			

SUBPART DD - CONTAINMENT BUILDINGS

Applicability	264.1100 except introductory paragraph	264a.1(a)	X			
Applicability - effective date	264.1100 introductory paragraph	264a.1(a) 264a.1100	D			

Legal Statement Comment: At § 264a.1100, the Commonwealth has modified the incorporation by reference of 40 CFR 264.1100 to change the effective date of the 40 CFR Part 264, Subpart DD requirements to January 11, 1997. The Federal effective date is not used because Pennsylvania did not adopt the containment building requirements until after February 18, 1993.

Design and operating standards	264.1101 except (b)(4)(i) and (c)(2)	264a.1(a)	X			
Provide written notice for a request to delay of standard	264.1101(b)(4)(i)	264a.1(a) 264a.1101(1)	D			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE

Legal Statement Comment: At § 264a.1101(1), the Commonwealth has modified the incorporation by reference of 40 CFR 264.1101(b)(4)(i) to change the deadline for providing written notice of a request to delay the secondary containment requirement. The Federal compliance date is not used because Pennsylvania did not adopt the containment building requirements until after November 16, 1992.

Obtain certification by engineer if compliance with 264.1101(a)-(c) requirements	264.1101(c)(2)	264a.1101(2) and (3)	D			
--	----------------	----------------------	---	--	--	--

Legal Statement Comment: At § 264a.1101(2) and (3), the Commonwealth has modified the incorporation by reference of 40 CFR 264.1101(c)(2) to change the deadline for obtaining certification from a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)-(c). The Federal effective date is not used because Pennsylvania did not adopt the containment building requirements until after February 18, 1993.

Closure and post-closure care	264.1102	264a.1(a)	X			
[Reserved]	264.1103- 264.1110	264a.1(a)	X			

SUBPART EE - HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

Applicability	264.1200	264a.1(a)	X			
Design and operating standards	264.1201	264a.1(a)	X			
Closure and post-closure care	264.1202	264a.1(a)	X			

APPENDICES TO PART 264

Recordkeeping instructions	Appendix I	264a.1(a)	X			
[Reserved]	Appendices II-III	264a.1(a)	X			

CONSOLIDATED CHECKLIST C5

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 264 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRI- N- GENT	BROADER IN SCOPE
Cochran's approximation to the Behrens-Fisher Students' T-test	Appendix IV	264a.1(a)	X			
Examples of potentially incompatible waste	Appendix V	264a.1(a)	X			
Political jurisdictions in which compliance with § 264.18(a) must be demonstrated	Appendix VI	No analog per 264a.1(b) (1)	This appendix is not incorporated by reference because it is not applicable to Pennsylvania.			
[Reserved]	Appendices VII-VIII	264a.1(a)	X			
Ground-water monitoring list	Appendix IX	264a.1(a)	X			

**E. Consolidated Checklist C7 — 40 CFR Part 266 as of June 30, 1998 and
Commonwealth Analogs**

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities 40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
SUBPARTS A-B - [RESERVED]						
SUBPART C - RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL						
Applicability	266.20	266a.20	X			

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and
Specific Types of Hazardous Waste Management Facilities
40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Standards applicable to generators and transporters of materials used in a manner that constitutes disposal	266.21	266a.20	X			
Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users	266.22	266a.20	X			
Standards applicable to users of materials that are used in a manner that constitutes disposal	266.23	266a.20	X			

SUBPARTS D-E - [RESERVED]

SUBPART F - RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

Applicability and requirements	266.70	266a.20	X			
Transportation license	No Federal analog in Subpart F	266a.70(1)				X

Legal Statement Comment: Transporters of recyclable materials utilized for precious metal recovery are deemed to have a transporter license if certain conditions met. Transporter licensing is beyond the scope of the Federal program.

Treatment of materials prior to precious metal recovery	No Federal analog in Subpart F	266a.70(2)			X	
---	--------------------------------	------------	--	--	---	--

Legal Statement Comment: In § 266a.70(2), Pennsylvania subjects facilities that treat recyclable materials prior to precious metal recovery to full regulation and requires the facility to obtain a permit. The Federal program only regulates storage of such materials prior to recovery. This makes the Commonwealth's program more stringent than the Federal program.

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities 40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART G - SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Applicability and requirements	266.80	266a.20	X			
Treatment of spent lead-acid batteries prior to reclamation.	No Federal analog in Subpart G	266a.80(a)			X	

Legal Statement Comment: In § 266a.80(a), Pennsylvania subjects facilities that treat spent lead-acid batteries prior to reclamation to full regulation and requires the facility to obtain a permit. The Federal program only regulates storage of such materials prior to reclamation. This makes the Commonwealth's program more stringent than the Federal program.

Administration fees	No Federal analog in Subpart G	266a.80(b)				X
---------------------	--------------------------------	------------	--	--	--	---

Legal Statement Comment: Facilities that store spent lead-acid batteries prior to reclamation are exempt from the Commonwealth's administration fees. Such fees are beyond the scope of the Federal program.

SUBPART H - HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Applicability	266.100 except (b)(1)	266a.20	X			
Used oil burned for energy recovery	266.100(b)(1)	266a.20 266a.100	D			

Legal Statement Comment: Pennsylvania has modified the incorporation by reference of 40 CFR 266.100(b) (1) to reference the Commonwealth's regulations regarding used oil in Chapter 266a, Subchapter E. Pennsylvania has not adopted the current Federal regulations addressing used oil in 40 CFR Part 279 and is not seeking authorization at this time for a used oil program.

Management prior to burning	266.101	266a.20	X			
Permit standards for burners	266.102	266a.20	X			
Interim status standards for burners	266.103	266a.20	X			

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities 40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Standards to control organic emissions	266.104	266a.20	X			
Standards to control particulate matter	266.105	266a.20	X			
Standards to control metals emissions	266.106	266a.20	X			
Standards to control hydrogen chloride (HCl) and chlorine gas (Cl ₂) emissions	266.107	266a.20	X			
Small quantity on-site burner exemption	266.108	266a.20	X			
Low risk waste exemption	266.109	266a.20	X			
Waiver of DRE trial burn for boilers	266.110	266a.20	X			
Standards for direct transfer	266.111	266a.20	X			
Regulation of residues	266.112	266a.20	X			

SUBPARTS I-L [RESERVED]

SUBPART M - MILITARY MUNITIONS

Applicability	266.200	266a.20	X			
Definitions	266.201	266a.20	X			
Definition of solid waste	266.202	266a.20	X			
Standards applicable to the transportation of solid waste military munitions	266.203	266a.20	X			
Standards applicable to emergency responses	266.204	266a.20	X			

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities 40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Standards applicable to the storage of solid waste military munitions	266.205	266a.20	X			
Standards applicable to the treatment and disposal of waste military munitions	266.206	266a.20	X			
APPENDICES TO PART 266						
Tier I and Tier II feed rate and emissions screening limits for metals	Appendix I	266a.20	X			
Tier I feed rate screening limits for total chlorine	Appendix II	266a.20	X			
Tier II emission rate screening limits for free chlorine and hydrogen chloride	Appendix III	266a.20	X			
Reference air concentrations	Appendix IV	266a.20	X			
Risk specific doses (10^{-5})	Appendix V	266a.20	X			
Stack plume rise	Appendix VI	266a.20	X			
Health-based limits for exclusion of waste-derived residues	Appendix VII	266a.20	X			
Potential PICs for determination of exclusion of waste-derived residues	Appendix VIII	266a.20	X			
Methods manual for compliance with the BIF regulations	Appendix IX	266a.20	X			

CONSOLIDATED CHECKLIST C7

Standards for the Management of Specific Hazardous Wastes and
Specific Types of Hazardous Waste Management Facilities
40 CFR Part 266 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
[Reserved]	Appendix X	266a.20	X			
Lead-bearing materials that may be processed in exempt lead smelters	Appendix XI	266a.20	X			
Nickel or chromium- bearing materials that may be processed in exempt nickel-chromium recovery furnaces	Appendix XII	266a.20	X			
Mercury bearing wastes that may be processed in exempt mercury recovery units	Appendix XIII	266a.20	X			

*F. Consolidated Checklist C6 — 40 CFR Part 265 as of June 30, 1998 and
Commonwealth Analogs*

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 265a the following provisions limit the applicability of the substitution of terms: §§ 265a.12 and 265a.147. No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART A - GENERAL

Purpose, scope, and applicability	265.1 except (b), (c)(4), (c)(6), and (c)(11)	265a.1(a)	X			
Applies to all owners and operators of TSDFs with exceptions	265.1(b)	265a.1(b)(2)	X			

Legal Statement Comment: The Commonwealth's provision at § 265a.1(b)(2) is equivalent to the Federal analog and clarifies that the scope of Chapter 265a is limited only to the extent that Pennsylvania regulations specify.

Post-authorization rulemaking	265.1(c)(4)	No analog per 265a.1(b)(1)	Not adopted by the Commonwealth because this provision exempts facilities located in authorized States			
Recyclable materials	265.1(c)(6)	265a.1(b)(3)	D			

Legal Statement Comment: The Commonwealth's analog to 40 CFR 265.1(c)(6) does not contain an analogous reference to 40 CFR Part 279 because Pennsylvania has not adopted and is not seeking authorization for the used oil revisions to the Federal hazardous waste program. The Commonwealth has included a reference to its permit by rule provisions in § 270a.60, which apply to hazardous waste treatment that occurs prior to the actual reclamation or recycling process.

universal waste handlers and transporters handling the listed universal wastes are subject to Part 273 rather than Part 264	265.1(c)(14)	265a.1(a) 265a.1(b)(4)	X			
---	--------------	---------------------------	---	--	--	--

Legal Statement Comment: The additional provision at § 265a.1(b)(4) clarifies that Pennsylvania may have additional universal wastes not addressed in 40 CFR Part 273. At this time, the Commonwealth has not adopted any additional universal wastes.

[Reserved]	265.2-265.3	265a.1(a)	X			
------------	-------------	-----------	---	--	--	--

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Imminent hazard action	265.4	265a.1(a)	X			

SUBPART B - GENERAL FACILITY STANDARDS

Applicability	265.10	265a.1(a)	X			
Identification number	265.11	265a.1(a)	X			
Prohibition on accepting waste from transporter without an ID number and a license.	No Federal analog in 265.11	265a.11				X

Legal Statement Comment: The Federal code does not contain an analog to this prohibition. Licensing of hazardous waste transporters is beyond the scope of the Federal program.

Required notices for imports of hazardous waste	265.12	265a.1(a) 265a.12	X			
General waste analysis	265.13	265a.1(a)	X			
Preapproval before accepting new waste streams (Module 1 requirement)	No Federal analog in 265.13	265a.13			X	

Legal Statement Comment: The Commonwealth requires owners and operators of TSD facilities to seek preapproval from the Department before accepting new waste streams. This requirement is known as the Module 1 or Mod 1 requirement. When interim status facilities apply for and receive operating permits, the Mod 1 and Generic Mod 1 requirements will no longer apply to them if an alternative to the requirement has been included in the permit. The Commonwealth also requires a liner compatibility evaluation. These additional requirements make the Commonwealth's program more stringent than the Federal program.

Security	265.14	265a.1(a)	X			
General inspection requirements	265.15	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Construction inspection requirements	No Federal analog in 265.15	265a.15			X	

Legal Statement Comment: In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a facility to the Department for approval. The schedule must provide for inspection and approval by the Department of each phase of construction. This requirement is more stringent than the Federal program.

Personnel training	265.16	265a.1(a)	X			
General requirements for ignitable, reactive, or incompatible wastes	265.17	265a.1(a)	X			
Location standards	265.18	265a.1(a)	X			
Siting requirements	No Federal analog	265a.18			X	X

Legal Statement Comment: Hazardous waste management facilities are subject to the siting requirements in Chapter 269a which are either more stringent or beyond the scope of the Federal program.

Construction quality assurance program	265.19	265a.1(a)	X			
--	--------	-----------	---	--	--	--

SUBPART C - PREPAREDNESS AND PREVENTION

Applicability	265.30	265a.1(a)	X			
Maintenance and operation of facility	265.31	265a.1(a)	X			
Required equipment	265.32	265a.1(a)	X			
Testing and maintenance of equipment	265.33	265a.1(a)	X			
Access to communications or alarm system	265.34	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Required aisle space	265.35	265a.1(a)	X			
[Reserved]	265.36	265a.1(a)	X			
Arrangements with local authorities	265.37	265a.1(a)	X			

SUBPART D - CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Applicability	265.50	265a.1(a)	X			
Purpose and implementation of contingency plan	265.51	265a.1(a)	X			
Content of contingency plan	265.52	265a.1(a)	X			
Copies of contingency plan	265.53	265a.1(a)	X			
Amendment of contingency plan	265.54	265a.1(a)	X			
Emergency coordinator	265.55	265a.1(a)	X			
Emergency procedures	265.56 except (d)	265a.1(a)	X			
Notification of the Department	265.56(d)	265a.1(a) 265a.56			X	

Legal Statement Comment: The Commonwealth is more stringent as it requires an emergency coordinator to immediately notify both the Department and the National Response Center as part of the emergency procedures.

SUBPART E - MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Applicability	265.70	265a.1(a)	X			
Use of manifest system	265.71	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Use of manifest system	265.71 except (a)	265a.1(a)	X			
Department approval of manifest forms	265.71(a)	265a.1(a) 265a.71			X	

Legal Statement Comment: At § 265a.71(1), the Commonwealth prohibits a facility from accepting waste from a transporter unless the waste is accompanied by the Commonwealth manifest form or another form approved by the Department, unless a manifest is not required by 40 CFR 262.20(e). The Federal code does not prohibit a facility from accepting unmanifested waste even when a manifest is required by 40 CFR 262.20. At § 265a.71(2), the Commonwealth requires that copies of the manifest be sent to the Department and to the generator State, as required, within 30 days of the delivery. The Federal code only requires that the manifest be sent to the generator within 30 days of the delivery. These requirements make the Commonwealth's program more stringent than the Federal program.

Manifest discrepancies	265.72	265a.1(a)	X			
Operating record	265.73	265a.1(a)	X			
Availability, retention, and disposition of records	265.74	265a.1(a)	X			
Biennial report	265.75	265a.1(a) 265a.75	X			

Legal Statement Comment: The Commonwealth clarifies in § 265a.75 that the biennial report must be submitted on EPA form 8700-13B, as modified by the Department.

Unmanifested waste report	265.76	265a.1(a)	X			
Additional reports	265.77	265a.1(a)	X			
Hazardous waste management fees; documentation; penalties; administration fees	No Federal analogs	265a.78 - 265a.83				X

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: Pennsylvania requires facilities to pay hazardous waste management fees and administration fees. Such fees are beyond the scope of the Federal program.

SUBPART F - GROUND-WATER MONITORING

Applicability	265.90	265a.1(a)	X			
Ground-water monitoring system	265.91	265a.1(a)	X			
Sampling and analysis	265.92	265a.1(a)	X			
Preparation, evaluation, and response	265.93	265a.1(a)	X			
Recordkeeping and reporting	265.94	265a.1(a)	X			

SUBPART G - CLOSURE AND POST-CLOSURE

Applicability	265.110	265a.1(a)	X			
Closure performance standard	265.111	265a.1(a)	X			
Closure plan; amendment of plan	265.112	265a.1(a)	X			
Closure; time allowed for closure	265.113	265a.1(a)	X			
Disposal or decontamination of equipment, structures and soils	265.114	265a.1(a)	X			
Certification of closure	265.115	265a.1(a) 265a.115	D			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: A minor change has been made to the incorporation by reference of 40 CFR 265.115. The Federal analog references the provision at 40 CFR 265.143(h) (relating to the release of an owner or operator from the financial assurance requirements). Pennsylvania does not incorporate by reference 40 CFR 265.143(h) because the Federal provision does not provide a mechanism for the release of closure bonds. Therefore, the owner or operator must satisfy § 265a.166 instead of 40 CFR 265.143(h). The change made in § 265a.115 clarifies that Commonwealth-specific procedures are required to certify closure.

Survey plat	265.116	265a.1(a)	X			
Post-closure care and use of property	265.117	265a.1(a)	X			
Post-closure plan; amendment of plan	265.118	265a.1(a)	X			
Post-closure notices	265.119	265a.1(a)	X			
Certification of completion of post-closure care	265.120	265a.1(a) 265a.120	D			

Legal Statement Comment: A minor change has been made to the incorporation by reference of 40 CFR 265.120. The Federal analog references the provision at 40 CFR 265.145(h) (relating to the release of an owner or operator from the financial assurance requirements). Pennsylvania does not incorporate by reference 40 CFR 265.145(h) because the Federal provision does not provide a mechanism for the release of post-closure bonds. Therefore, the owner or operator must satisfy § 265a.166 instead of 40 CFR 265.145(h). The change made in § 265a.120 clarifies that Commonwealth-specific procedures are required to certify closure.

SUBPART H - FINANCIAL REQUIREMENTS

Applicability	265.140	265a.1(a)	X			
Definition of terms as used in this subpart	265.141	265a.1(a)	X			
Definitions of "applicant", "financial institutions", "surety bond", and "surety company"	No Federal analogs in 265.141	265a.141	D			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: For clarity, Pennsylvania defines these terms which are used both in the Federal code and in the Commonwealth's regulations; the definitions are consistent with the use of these terms in the Federal code.

Definition of "collateral bond"	No Federal analogs in 265.141	265a.141	D			
---------------------------------------	-------------------------------------	----------	---	--	--	--

Legal Statement Comment: The Commonwealth defines this term which is unique to special bonding requirements described in detail in the body of the Legal Statement.

Definition of "final closure"	No Federal analog in 265.141	265a.141	D			
----------------------------------	------------------------------------	----------	---	--	--	--

Legal Statement Comment: Pennsylvania requires that the same instrument guarantee both closure and post-closure care; thus, the definition of final closure has been changed as it applies to the financial assurance requirements in order to refer to completion of closure and post-closure care requirements.

Cost estimate for closure	265.142	265a.1(a)	X			
------------------------------	---------	-----------	---	--	--	--

Financial assurance for closure	265.143 except (e)	No analogs per 265a.143	The Commonwealth does not incorporate by reference the provisions of 40 CFR 265.143 (related to financial assurance of closure) with the exception of 40 CFR 265.143(e). Instead, the Commonwealth has unique bonding requirements which are discussed in detail in the body of the Legal Statement.			
------------------------------------	-----------------------	-------------------------------	--	--	--	--

Financial test and corporate guarantee for closure	265.143(e) except (e)(10)(i)	265a.1(a) 265a.143 265a.156(e)	D			
--	---------------------------------	--------------------------------------	---	--	--	--

Legal Statement Comment: In § 265a.156(e), the Commonwealth requires that bonds pledging a corporate guarantee for closure (which includes post-closure care for purposes of the financial assurance requirements) be subject to 40 CFR 265.143(e) and 265.145(e) with the exception of 40 CFR 265.143(e)(10)(i) and 265.145(e)(11)(i). Note that the reference to 40 CFR 265.145(e)(11)(i) was inadvertently omitted, and the provision will be corrected by Pennsylvania in a future rulemaking.

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Failure to perform final closure in accordance with closure plan and permit	265.143(e)(10)(i)	265a.156(e) 265a.168	D			

Legal Statement Comment: The Commonwealth has unique requirements for bond forfeiture that apply in the situation where the owner or operator fails to perform final closure in accordance with applicable laws. See the detailed discussion of Pennsylvania's bonding requirements in the body of the Legal Statement.

Cost estimate for post-closure care	265.144	265a.1(a)	X			
Financial assurance for post-closure care	265.145 except (e)	No analog per 265a.145	The Commonwealth does not incorporate by reference the provisions of 40 CFR 265.145 (related to financial assurance of post-closure care) with the exception of 40 CFR 265.145(e). Instead, the Commonwealth has unique bonding requirements which are discussed in detail in the body of the Legal Statement.			
Financial test and corporate guarantee for post-closure care	265.145(e) except (e)(11)(i)	265a.1(a) 265a.145 265a.156(e)	D			

Legal Statement Comment: In § 265a.156(e), the Commonwealth should require that bonds pledging a corporate guarantee for closure (which includes post-closure care for purposes of the financial assurance requirements) be subject to 40 CFR 265.143(e) and 265.145(e) with the exception of 40 CFR 265.143(e)(10)(i) and 265.145(e)(11)(i). Note that the reference to 40 CFR 265.145(e)(11)(i) was inadvertently omitted, and the provision will be corrected by Pennsylvania in a future rulemaking.

Failure to perform post-closure care in accordance with post-closure plan and permit	265.145(e)(11)(i)	265a.168	D			
--	-------------------	----------	---	--	--	--

Legal Statement Comment: The Commonwealth has unique requirements for bond forfeiture that apply in the situation where the owner or operator fails to perform post-closure care in accordance with applicable laws. See the detailed discussion of Pennsylvania's bonding requirements in the body of the Legal Statement.

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Use of a mechanism for financial assurance requirements of both closure and post-closure care	265.146	265a.1(a)	X			
Liability requirements	265.147 except (g)(2) and (i)(4)	265a.1(a)	X			
Legality and enforceability of guarantees and surety bonds	265.147(g)(2) and (i)(4)	265a.1(a) 265a.147	X			
Incapacity of owners or operators, guarantors, or financial institutions	265.148	265a.1(a) 265a.148	X			

Legal Statement Comment: The Commonwealth clarifies that notice must be sent by certified mail to the Department.

Use of state required mechanisms; state assumption of responsibility	265.149 and 265.150	No analogs per 265a.149 and 265a.150	These provisions were not incorporated by reference because they apply solely in the context of the Federal program.			
Bonding requirements	No direct analogs in Subpart H	265a.153 - 265a.169	See the discussion of the Commonwealth's unique bonding requirements in the body of the Legal Statement.			

SUBPART I - USE AND MANAGEMENT OF CONTAINERS

Applicability	265.170	265a.1(a)	X			
Condition of containers	265.171	265a.1(a)	X			
Compatibility of waste with container	265.172	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Management of containers	265.173	265a.1(a)	X			
Height, width, depth and placement of container groups	No Federal analog in 265.173	265a.173			X	

Legal Statement Comment: Pennsylvania requires that the height, width, and depth of a group of containers shall provide a configuration and aisle space to facilitate inspections and unobstructed movement of emergency equipment and personnel. In addition, a 40-foot setback from a building shall be maintained for all outdoor storage of reactive or ignitable hazardous waste. The proposed configuration of containers shall be included in the permit application. These requirements make the Commonwealth's program more stringent than the Federal program.

Inspections	265.174	265a.1(a)	X			
[Reserved]	265.175	265a.1(a)	X			
Containment and collection system	No Federal analog in Subpart I	265a.175			X	

Legal Statement Comment: The Federal program does not have containment requirements for containers in interim status facilities. Pennsylvania's code includes more stringent standards regarding containment and collection systems at § 265a.175.

Special requirements for ignitable or reactive waste	265.176	265a.1(a)	X			
Special requirements for incompatible wastes	265.177	265a.1(a)	X			
Air emission standards	265.178	265a.1(a)	X			
Containment	No Federal analog in Subpart I	265a.179			X	

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: The Federal program does not have containment requirements for containers in interim status facilities. Pennsylvania's code is more stringent because interim status facilities handling waste in containers must meet the containment requirements of 40 CFR 264.175.

SUBPART J - TANK SYSTEMS

Applicability	265.190	265a.1(a)	X			
Assessment of existing tank system's integrity	265.191 except (a)	265a.1(a)	X			
Compliance date for 265.191 assessment requirements	265.191(a)	265a.1(a) 265a.191	D			

Legal Statement Comment: At § 265a.191, the Commonwealth has modified the incorporation by reference to require compliance with the 40 CFR 265.191 assessment requirements by January 17, 1994. The Federal compliance date is not used because Pennsylvania did not adopt the containment and assessment requirements until after January 12, 1988.

Design and installation of new tank systems or components	265.192	265a.1(a)	X			
Containment and detection of releases	265.193 except (a)	265a.1(a)	X			
Compliance date for 265.193 containment requirements	265.193(a)	265a.1(a) 265a.193	D			

Legal Statement Comment: At § 265a.193, the Commonwealth has modified the incorporation by reference to change the compliance dates for the 40 CFR 265.193 tank containment requirements. The Federal compliance dates were not used because Pennsylvania did not adopt the containment and assessment requirements until after January 12, 1987.

General operating requirements	265.194	265a.1(a)	X			
--------------------------------	---------	-----------	---	--	--	--

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Tank labeling requirement	No Federal analog in 265.194	265a.194			X	

Legal Statement Comment: Pennsylvania is more stringent in that owners or operators are required to label tanks. There is no analogous Federal requirement.

Inspections	265.195 except (a)	265a.1(a)	X			
Inspection of tanks not in operation	265.195(a)	265a.1(a) 265a.195			X	

Legal Statement Comment: The Federal regulations only require inspections once each operating day. The Commonwealth is more stringent by requiring inspections of tanks every 72 hours when not operating, if waste remains in the tank or tank system components.

Response to leaks or spills and disposition of leaking or unfit-for- use tank systems	265.196	265a.1(a)	X			
Closure and post- closure care	265.197	265a.1(a)	X			
Special requirements for ignitable or reactive wastes	265.198	265a.1(a)	X			
Special requirements for incompatible wastes	265.199	265a.1(a)	X			
Waste analysis and trial tests	265.200	265a.1(a)	X			
Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks	265.201	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Air emission standards	265.202	265a.1(a)	X			
SUBPART K - SURFACE IMPOUNDMENTS						
Applicability	265.220	265a.1(a)	X			
Design and operating requirements	265.221	265a.1(a)	X			
Action leakage rate	265.222	265a.1(a)	X			
Containment system	265.223	265a.1(a)	X			
Response actions	265.223	265a.1(a)	X			
[Reserved]	265.224	265a.1(a)	X			
Waste analysis and trial tests	265.225	265a.1(a)	X			
Monitoring and inspection	265.226	265a.1(a)	X			
[Reserved]	265.227	265a.1(a)	X			
Closure and post-closure care	265.228	265a.1(a)	X			
Special requirements for ignitable or reactive waste	265.229	265a.1(a)	X			
Special requirements for incompatible wastes	265.230	265a.1(a)	X			
Air emission standards	265.231	265a.1(a)	X			
SUBPART L - WASTE PILES						
Applicability	265.250	265a.1(a)	X			
Protection from wind	265.251	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Waste analysis	265.252	265a.1(a)	X			
Containment	265.253	265a.1(a)	X			
Design and operating requirements	265.254	265a.1(a)	X			
Action leakage rates	265.255	265a.1(a)	X			
Special requirements for ignitable or reactive waste	265.256	265a.1(a)	X			
Special requirements for incompatible wastes	265.257	265a.1(a)	X			
Closure and post-closure care	265.258	265a.1(a)	X			
Response actions	265.259	265a.1(a)	X			
Monitoring and inspection	265.260	265a.1(a)	X			

SUBPART M - LAND TREATMENT

Applicability	265.270	265a.1(a)	X			
[Reserved]	265.271	265a.1(a)	X			
General operating requirements	265.272	265a.1(a)	X			
Waste analysis	265.273	265a.1(a)	X			
[Reserved]	265.274-265.275	265a.1(a)	X			
Food chain crops	265.276	265a.1(a)	X			
[Reserved]	265.277	265a.1(a)	X			
Unsaturated zone (zone of aeration) monitoring	265.278	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Recordkeeping	265.279	265a.1(a)	X			
Closure and post-closure	265.280	265a.1(a)	X			
Special requirements for ignitable or reactive waste	265.281	265a.1(a)	X			
Special requirements for incompatible wastes	265.282	265a.1(a)	X			

SUBPART N - LANDFILLS

Applicability	265.300	265a.1(a)	X			
Design and operating requirements	265.301	265a.1(a)	X			
Action leakage rate	265.302	265a.1(a)	X			
Response actions	265.303	265a.1(a)	X			
Monitoring and inspection	265.304	265a.1(a)	X			
[Reserved]	265.305-265.308	265a.1(a)	X			
Surveying and recordkeeping	265.309	265a.1(a)	X			
Closure and post-closure care	265.310	265a.1(a)	X			
[Reserved]	265.311	265a.1(a)	X			
Special requirements for ignitable or reactive waste	265.312	265a.1(a)	X			
Special requirements for incompatible wastes	265.313	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
Special requirements for bulk and containerized liquids	265.314	265a.1(a)	X			
Special requirements for containers	265.315	265a.1(a)	X			
Disposal of small containers of hazardous waste in overpacked drums (lab packs)	265.316	265a.1(a)	X			
SUBPART O - INCINERATORS						
Applicability	265.340	265a.1(a)	X			
Waste analysis	265.341	265a.1(a)	X			
[Reserved]	265.342-265.344	265a.1(a)	X			
General operating requirements	265.345	265a.1(a)	X			
[Reserved]	265.346	265a.1(a)	X			
Monitoring and inspections	265.347	265a.1(a)	X			
[Reserved]	265.348-265.350	265a.1(a)	X			
Closure	265.351	265a.1(a)	X			
Interim status incinerators burning particular hazardous wastes	265.352	265a.1(a)	X			
[Reserved]	265.353-265.369	265a.1(a)	X			
SUBPART P - THERMAL TREATMENT						
Other thermal treatment	265.370	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
[Reserved]	265.371-265.372	265a.1(a)	X			
General operating requirements	265.373	265a.1(a)	X			
[Reserved]	265.374	265a.1(a)	X			
Waste analysis	265.375	265a.1(a)	X			
[Reserved]	265.376	265a.1(a)	X			
Monitoring and inspections	265.377	265a.1(a)	X			
[Reserved]	265.378-265.380	265a.1(a)	X			
Closure	265.381	265a.1(a)	X			
Open burning; waste explosives	265.382	265a.1(a) 265a.382			X	

Legal Statement Comment: Pennsylvania has incorporated by reference the Federal requirements for open burning of waste explosives which contain minimum distance requirements from adjacent properties and a requirement that burning be conducted in a manner that does not threaten human health or the environment. The Commonwealth is more stringent because the provision at § 265a.382 contains a strict prohibition of open burning of waste explosives in air basins.

Interim status thermal treatment devices burning particular hazardous waste	265.383	265a.1(a)	X			
---	---------	-----------	---	--	--	--

SUBPART Q - CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT

Applicability	265.400	265a.1(a)	X			
General operating requirements	265.401	265a.1(a)	X			
Waste analysis and trial tests	265.402	265a.1(a)	X			
Inspections	265.403	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Closure	265.404	265a.1(a)	X			
Special requirements for ignitable or reactive waste	265.405	265a.1(a)	X			
Special requirements for incompatible wastes	265.406	265a.1(a)	X			
SUBPART R - UNDERGROUND INJECTION						
Applicability	265.430	265a.1(a)	X			
SUBPARTS S-V - RESERVED						
SUBPART W - DRIP PADS						
Applicability	265.440	265a.1(a)	X			
Assessment of existing drip pad integrity	265.441	265a.1(a)	X			
Design and installation of new drip pads	265.442	265a.1(a)	X			
Design and operating requirements	265.443	265a.1(a)	X			
Inspections	265.444	265a.1(a)	X			
Closure	265.445	265a.1(a)	X			
SUBPARTS X-Z [RESERVED]						
SUBPART AA - AIR EMISSION STANDARDS FOR PROCESS VENTS						
Applicability	265.1030	265a.1(a)	X			
Definitions	265.1031	265a.1(a)	X			
Standards: Process vents	265.1032	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of
Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Standards: Closed-vent systems and control devices	265.1033	265a.1(a)	X			
Test methods and procedures	265.1034	265a.1(a)	X			
Recordkeeping requirements	265.1035	265a.1(a)	X			
[Reserved]	265.1036- 265.1049	265a.1(a)	X			

SUBPART BB - AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

Applicability	265.1050	265a.1(a)	X			
Definitions	265.1051	265a.1(a)	X			
Standards: Pumps in light liquid service	265.1052	265a.1(a)	X			
Standards: Compressors	265.1053	265a.1(a)	X			
Standards: Pressure relief devices in gas/vapor service	265.1054	265a.1(a)	X			
Standards: Sampling connection systems	265.1055	265a.1(a)	X			
Standards: Open-ended valves or lines	265.1056	265a.1(a)	X			
Standards: Valves in gas/vapor service or in light liquid service	265.1057	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors	265.1058	265a.1(a)	X			
Standards: Delay of repair	265.1059	265a.1(a)	X			
Standards: Closed-vent systems and control devices	265.1060	265a.1(a)	X			
Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak	265.1061	265a.1(a)	X			
Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair	265.1062	265a.1(a)	X			
Test methods and procedures	265.1063	265a.1(a)	X			
Recordkeeping requirements	265.1064	265a.1(a)	X			
[Reserved]	265.1065- 265.1079	265a.1(a)	X			

SUBPART CC - AIR EMISSION STANDARDS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of
Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Applicability	265.1080	265a.1(a)	X			
Definitions	265.1081	265a.1(a)	X			
Schedule for implementation of air emission standards	265.1082	265a.1(a)	X			
Standards: General	265.1083	265a.1(a)	X			
Waste determination procedures	265.1084	265a.1(a)	X			
Standards: Tanks	265.1085	265a.1(a)	X			
Standards: Surface impoundments	265.1086	265a.1(a)	X			
Standards: Containers	265.1087	265a.1(a)	X			
Standards: Closed- vent systems and control devices	265.1088	265a.1(a)	X			
Inspection and monitoring requirements	265.1089	265a.1(a)	X			
Recordkeeping requirements	265.1090	265a.1(a)	X			
[Reserved]	265.1091	265a.1(a)	X			
SUBPART DD - CONTAINMENT BUILDINGS						
Applicability	265.1100	265a.1(a)	X			
Design and operating standards	265.1101	265a.1(a)	X			
Closure and post- closure care	265.1102	265a.1(a)	X			

CONSOLIDATED CHECKLIST C6

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 40 CFR Part 265 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
[Reserved]	265.1103- 265.1110	265a.1(a)	X			

SUBPART EE - HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES STORAGE

Applicability	265.1200	265a.1(a)	X			
Design and operating standards	265.1201	265a.1(a)	X			
Closure and post-closure care	265.1202	265a.1(a)	X			

APPENDICES TO PART 265

Recordkeeping instructions	Appendix I	265a.1(a)	X			
[Reserved]	Appendix II	265a.1(a)	X			
EPA Interim Primary Drinking Water Standards	Appendix III	265a.1(a)	X			
Tests for significance	Appendix IV	265a.1(a)	X			
Examples of potentially incompatible waste	Appendix V	265a.1(a)	X			
Compounds with Henry's Law constant less than 0.1 Y/X	Appendix VI	265a.1(a)	X			

VI. LAND DISPOSAL RESTRICTIONS

Federal Authority: RCRA §§1006, 2002(a), 3001 and 3004

A. State statutes and regulations restrict the land disposal of hazardous wastes as specified in 40 CFR Part 268 and indicated in Consolidated Checklist C8 which includes the provisions of Revision Checklists 34, 39, 50, 62, 63, 66, 74, 78, 83, 95, 102, 103, 106, 109,

116, 123, 124, 126, 134, 136, 137, 142A, 142B, 142C, 142D, 151, 155, 157, 159, 160, 161, 162, 165, 167A, 167B, and 167C.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), August 17, 1988 (53 FR 31138), February 27, 1989 (54 FR 8264), May 2, 1989 (54 FR 18836), June 23, 1989 (54 FR 26594), September 6, 1989 (54 FR 36967), June 13, 1990 (55 FR 23935), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), January 31, 1991 (56 FR 3864), August 19, 1991 (56 FR 41164), March 6, 1992 (57 FR 8086), May 15, 1992 (57 FR 20766), June 26, 1992 (57 FR 28628), August 18, 1992 (57 FR 37194), October 20, 1992 (57 FR 47772), May 14, 1993 (58 FR 28506), May 24, 1993 (58 FR 29860), August 31, 1993 (58 FR 46040), June 20, 1994 (59 FR 31551), August 24, 1994 (59 FR 43496), September 19, 1994 (59 FR 47980)⁴, September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), April 8, 1996 (61 FR 15566 and 61 FR 15660), April 30, 1996 (61 FR 19117), June 28, 1996 (61 FR 33680), July 10, 1996 (61 FR 36419), August 26, 1996 (61 FR 43924), January 14, 1997 (62 FR 1992), February 19, 1997 (62 FR 7502), May 12, 1997 (62 FR 25998), June 17, 1997 (62 FR 32974), July 14, 1997 (62 FR 37694), August 28, 1997 (62 FR 45568), December 5, 1997 (62 FR 64504), May 4, 1998 (63 FR 24596), May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266), and June 29, 1998 (63 FR 35147).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1)&(6), 6018.105(a) and 6018.401(a).

25 Pa. Code Chapter 268a, effective May 1, 1999.

Remarks of the General Counsel

The Commonwealth's general authorities at 35 P.S. §§ 6018.102, 6018.104(1)&(6) and 6018.105(a), give the Board the broad authority to administer the Commonwealth's solid waste management program and to adopt rules and regulations to accomplish the purposes and carry out the provisions of the Commonwealth's Solid Waste Management Act. In addition, under 35 P.S. § 6018.104(1), the Department has the authority to regulate the disposal of solid waste. Finally, 35 P.S. § 6018.401(a) makes it illegal to treat or dispose of wastes unless authorized by the rules of the Department. These combined authorities provide the Commonwealth with an adequate authority to restrict land disposal of hazardous wastes and to promulgate standards specifying levels or methods of treatment and the authority to exempt wastes from the land disposal prohibitions.

At 25 Pa. Code Chapter 268a, and as indicated in Consolidated Checklist C8 in Subsection VI.B below, Pennsylvania has adopted the Federal requirements by reference and therefore has regulations for land disposal restrictions that are identical to the Federal regulations. The Commonwealth has only modified its regulations such that provisions that are non-delegable to States remain the provenance of the EPA.

⁴The September 19, 1994 rule indicates that it was not EPA's intention to remove the subparagraphs of 268.7(a) as the August 31, 1993 rule (58 FR 48040) implied. The provisions have been in effect continuously in the form published in the CFR revised as of July 1, 1993.

B. Consolidated Checklist C8 — 40 CFR Part 268 as of June 30, 1998 and Commonwealth Analogs

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. Section 268a.1(b) limits the applicability of the substitution of terms in Chapter 268a. No comment was made in the body of this checklist regarding this provision since it has no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C8

**Land Disposal Restrictions
40 CFR Part 268 as of July 1, 1998**

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRI- N- GENT	MOR- E STRI- N- GENT	BROA- DER IN SCOPE
SUBPART A - GENERAL						
Purpose, scope and applicability	268.1 except (e)(3)	268a.1(a)	X			
Exemption for newly listed wastes not addressed by EPA within required time frame	268.1(e)(3)	268a.1(a) and (b)	X			
Definitions applicable in this part	268.2	268a.1(a)	X			
Dilution prohibited as a substitute for treatment	268.3	268a.1(a)	X			
Treatment surface impoundment exemption	268.4	268a.1(a)	X			
Procedures for case-by-case extensions to an effective date	268.5	No analog per 268a.1(a)	This Federal provision is not delegable to State hazardous waste programs.			
Petitions to allow land disposal of a waste prohibited under subpart C of part 268	268.6	No analog per 268a.1(a)	This Federal provision is not delegable to State hazardous waste programs.			

CONSOLIDATED CHECKLIST C8

Land Disposal Restrictions 40 CFR Part 268 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRI- N- GENT	MOR E STRI- N- GENT	BROA DER IN SCOP E
Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities	268.7	268a.1(a)	X			
[Reserved]	268.8	268a.1(a)	X			
Special rules regarding wastes that exhibit a characteristic	268.9	268a.1(a)	X			

SUBPART B - SCHEDULE FOR LAND DISPOSAL PROHIBITION AND ESTABLISHMENT OF TREATMENT STANDARDS

[Reserved]	268.10-268.12	268a.1(a)	X			
Schedule for wastes identified or listed after November 8, 1984	268.13	No analog per 268a.1(a)	This Federal provision regarding the time frame for addressing land disposal restrictions for newly listed wastes is not applicable to Pennsylvania.			
Surface impoundment exemptions	268.14	268a.1(a)	X			

SUBPART C - PROHIBITIONS ON LAND DISPOSAL

Waste specific prohibitions - wood preserving wastes	268.30	268a.1(a)	X			
Waste specific prohibitions - Dioxin-containing wastes	268.31	268a.1(a)	X			
[Reserved]	268.32	268a.1(a)	X			
Waste-specific prohibitions - organobromine wastes	268.33	268a.1(a)	X			

CONSOLIDATED CHECKLIST C8

Land Disposal Restrictions 40 CFR Part 268 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRI- N- GENT	MOR- E STRI- N- GENT	BROA- DER IN SCOPE
Waste specific prohibitions - toxicity characteristic metal wastes	268.34	268a.1(a)	X			
[Reserved]	268.35-268.36	268a.1(a)	X			
Waste specific prohibitions--ignitable and corrosive characteristic wastes whose treatment standards were vacated	268.37	268a.1(a)	X			
Waste specific prohibitions--newly identified organic toxicity characteristic wastes and newly listed coke by-product and chlorotoluene production wastes	268.38	268a.1(a)	X			
Waste specific prohibitions--spent aluminum potliners; reactive; and carbamate wastes	268.39	268a.1(a)	X			
SUBPART D - TREATMENT STANDARDS						
Applicability of treatment standards	268.40 except (b)	268a.1(a)	X			
Concentration level standards for wastewaters	268.40(b)	268a.1(a) and (b)	X			

CONSOLIDATED CHECKLIST C8

Land Disposal Restrictions 40 CFR Part 268 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRI- N- GENT	MOR E STRI- N- GENT	BROA DER IN SCOP E
Treatment standards expressed as concentrations in waste extract	268.41	268a.1(a)	X			
Treatment standards expressed as specified technologies	268.42 except 268.42(b)	268a.1(a)	X			
Alternative treatment standards	268.42(b)	No analog per 268a.1(a)	This Federal provision is not delegable to State hazardous waste programs.			
Treatment standards expressed as waste concentrations	268.43	268a.1(a)	X			
Variance from a treatment standard	268.44	No analog per 268a.1(a)	This Federal provision is not delegable to State hazardous waste programs.			
Treatment standards for hazardous debris	268.45	268a.1(a)	X			
Alternative treatment standards based on HTMR	268.46	268a.1(a)	X			
Universal treatment standards	268.48	268a.1(a)	X			
Alternative LDR treatment standards for contaminated soil	268.49	268a.1(a)	X			

SUBPART E - PROHIBITIONS ON STORAGE

Prohibitions on storage of restricted wastes	268.50	268a.1(a)	X			
--	--------	-----------	---	--	--	--

APPENDICES TO PART 268

CONSOLIDATED CHECKLIST C8

Land Disposal Restrictions 40 CFR Part 268 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRI- N- GENT	MOR- E STRI- N- GENT	BROA- DER IN SCOPE
[Reserved]	Appendix I-III	268a.1(a)	X			
Wastes excluded from lab packs under the alternative treatment standards of § 268.42(c)	Appendix IV	268a.1(a)	X			
[Reserved]	Appendix V	268a.1(a)	X			
Recommended technologies to achieve deactivation of characteristics in Section 268.42	Appendix VI	268a.1(a)	X			
LDR effective dates of surface disposed prohibited hazardous wastes	Appendix VII	268a.1(a)	X			
LDR Effective Dates of Injected Prohibited Hazardous Wastes	Appendix VIII	268a.1(a)	X			
Extraction procedures (EP) toxicity test method and structural integrity test (Method 1310)	Appendix IX	268a.1(a)	X			
[Reserved]	Appendix X	268a.1(a)	X			
Metal bearing wastes prohibited from dilution in a combustion unit according to 40 CFR 268.3(c)	Appendix XI	268a.1(a)	X			

VII. REQUIREMENTS FOR PERMITS

Federal Authority: RCRA §§3005 and 7004; 40 CFR 271.13 and 271.14, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), and September 22, 1986 (51 FR 33712).

A. *State statutes and regulations provide permit requirements consistent with the specifications of 40 CFR 271.13 and 271.14 as indicated in Consolidated Checklist C9 (formerly Checklist V) which includes the amendments of Revision Checklists 1, 2, 6, 11, 14, 17 D, 17 F, 17 M, 17 N, 17 O, 17 P, 17 Q, 17 S, 23, 24, 28, 34, 35, 38, 39, 40, 44 D, 44 E, 44 F, 44 G, 45, 48, 52, 54, 59, 60, 61, 64, 70, 78, 79, 82, 83, 85, 87, 92, 94, 100, 109, 124, 126, 142A, 142B, 142C, 142D, 154, 156, 163, and 168.*

Federal Authority: RCRA §§3005 and 7004; 40 CFR Parts 124 and 270, as amended January 28, 1983 (48 FR 3977), April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), September 1, 1983 (48 FR 39611), April 24, 1984 (49 FR 17716), December 4, 1984 (49 FR 47390), January 14, 1985 (50 FR 1978), July 15, 1985 (50 FR 28702), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), June 22, 1987 (52 FR 23447), September 9, 1987 (52 FR 33936), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27164), July 26, 1988 (53 FR 28118), September 2, 1988 (53 FR 34079), September 26, 1988 (53 FR 37396), September 28, 1988 (53 FR 37912), October 24, 1988 (53 FR 41649), January 4, 1989 (54 FR 246), January 9, 1989 (54 FR 615), January 30, 1989 (54 FR 4286), March 7, 1989 (54 FR 9596), August 14, 1989 (54 FR 33376), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), May 24, 1993 (58 FR 28506), August 31, 1993 (58 FR 46040), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), December 11, 1995 (60 FR 63417), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), February 12, 1997 (62 FR 6622), December 8, 1998 (62 FR 64636), and June 19, 1998 (63 FR 33782).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§6018.102, 6018.103, 6018.104, 6018.105(b), 6018.401, 6018.403(a), 6018.501, 6018.502, 6018.503, 6018.504 and 6018.610.

Right-to-Know Law, Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1 *et seq.*

Administrative Code of 1929, Act of April 9, 1929 (P.L. 177), as amended, § 1921-A, 71 P.S. § 510-21.

Administrative Agency Law, Act of November 25, 1970 (P.L. 707), as amended, §§ 504-506, 2 Pa. C.S. §§ 504-506.

Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530 No. 94, 35 P.S. §§ 8511-7516

25 Pa. Code Chapter 270a, effective May 1, 1999.

25 Pa. Code Chapter 1021, effective September 9, 1995, as amended (relating to practice and procedures of the Environmental Hearing Board).

Remarks of the General Counsel

Act 97, like RCRA, requires permits for the operation of hazardous waste treatment, storage and disposal facilities. These requirements are set forth in 35 P.S. § 6018.401(a) and 6018.501(a) and underscored in 35 P.S. §§ 6018.403(a) and 6018.610, where operation in violation of a permit is declared to be unlawful. 35 P.S. § 6018.610(2) makes it clear that the permit must be obtained before construction of the facility. 35 P.S. § 6018.504 allows applications for a permit to be reviewed by a local governing body which may, in conformity with 25 Pa. Code Chapters 260a through 270a, suggest revisions or disapproval of the permit if specific cause is given. According to the provisions of 35 P.S. § 6018.502(a), the permit applications must be on forms provided by the Department and must be accompanied by such plans, designs and relevant data as the Department may require. These forms, which have been included with the application for authorization as Appendix XV, demonstrate that the Department's forms require all the information which is required to be submitted under Federal regulations.

Incorporation of Regulations as Permit Conditions

One aspect of the Pennsylvania permit program which is more stringent than the Federal scheme is the that the state permit cannot be used as a shield from prosecution for violations of Act 97 or the regulations. In the preamble to the May 19, 1980, regulations (45 Fed. Reg. 98, p. 33311-33312), EPA presented 40 CFR Part 122.13(a) (now 40 CFR 270.4(a)) as a means of assuring permittees that all their obligations would be set forth in one document (the permit) and that compliance with the permit would guarantee immunity from enforcement for anything but an imminent hazard suit under Section 7003 of RCRA.

The Commonwealth cannot adopt this system for several reasons. First, Act 97 does not vest sole enforcement authority in the Department. 35 P.S. § 6018.604 gives municipal solicitors and county district attorneys the authority to sue to enjoin violations of the act and the regulations, as well as permit violations. Moreover, like many states, Pennsylvania has vested criminal enforcement powers in county district attorneys whose rights cannot be abrogated by Department regulation.

Second, 35 P.S. §§ 6018.401(a) and 6018.403(b)(9) make regulated entities responsible for complying with regulations and orders, as well as permits. This approach is repeated in 35 P.S. § 6018.605 (civil penalties) and 35 P.S. § 6018.606 (criminal penalties), where violations of the statute, the regulations, permits and orders are all made grounds for enforcement actions. There is no statutory basis for curtailing the rights of municipal prosecutors or for relieving permittees from the responsibility of acquainting themselves with the statute and regulations and complying with them as well as with the permit. In fact, the inability or unwillingness of a permit applicant or permittee to comply with the statute and regulations, as well as the permit provisions, whether from ignorance or by willful violation, is grounds for denial or revocation of the permit under 35 P.S. § 6018.503(c). See Swatara Contractors, Inc. v DER, 1982 EHB 75; Plymouth Equipment Co., Inc. v. DER, 1976 EHB 259.

The Department is authorized by 35 P.S. § 6018.104(7) to insert such permit conditions as appropriate to implement the statute and the regulations. Further, the Department complies with 40

CFR 271.13(c), which states that all permits issued by the state must require compliance with hazardous waste management facility standards, by inserting in each permit a condition which requires compliance with the statute and the regulations promulgated thereunder. Thus, every permit issued by the Department requires the permittee to comply with all applicable state hazardous waste statutory and regulatory requirements. Consequently, Pennsylvania's system is equivalent to the Federal scheme in that all state standards equivalent to 40 CFR Part 264 are either incorporated into the permit by virtue of site-specific permit conditions or are incorporated by reference through a permit condition requiring compliance with applicable regulations of the Commonwealth. At 25 Pa. Code § 270a.1(a), the Commonwealth has adopted by reference the Federal 40 CFR 270.30 provisions regarding conditions applicable to all permits.

Permit Modification and Termination (Revocation)

The Department's authority to modify or revoke permits is broader than that required by Federal regulations. 35 P.S. §§ 6018.503(c) and (e) establish certain statutory grounds under which a permit may be modified, suspended, or revoked. 35 P.S. § 6018.503(c) authorizes the Department to modify, suspend, or revoke a permit for the failure of the permittee or the applicant to comply with any provision of Act 97 or other Federal or state laws relating to environmental or public health, any rule or regulation, order, or permit condition, as indicated by past or continuing violations. 35 P.S. § 6018.503(e) also authorizes the Department to revoke or suspend a permit where the facility: (1) is, or has been, conducted in violation of the Act or the rules and regulations adopted thereunder; (2) is creating a public nuisance; (3) is creating a potential hazard to public health, safety and welfare; (4) is adversely affecting the environment; (5) is being operated in violation of any term or condition of the permit; or (6) is operated pursuant to a permit not granted in accordance with law. The Department's regulations at 25 Pa. Code § 270a.41 incorporate by reference the Federal provisions regarding permit modification or revocation and reissuance that are found at 40 CFR 270.41 - 270.43. In addition, 25 Pa. Code § 270a.41(1) authorizes the Department to modify, revoke and reissue, or terminate a permit upon the Department's initiative for a reason authorized under Act 97, the Commonwealth's hazardous waste regulations or the terms and conditions of the permit.

There is no analogue in the Federal regulations to the state's authority under Act 97 to "suspend" a permit as an enforcement measure. Federal actions on permits are limited to major and minor modifications, revocation and reissuance and termination under 40 CFR 270.41 - 270.43. The Commonwealth implements the Act 97 authority to suspend permits only with regard to non-hazardous municipal and residual waste, which is also covered by Act 97. Consequently, no implementing regulations have been promulgated with respect to suspension of hazardous waste permits. The only reference to suspension of permits in the regulations is at 25 Pa. Code §§ 264a.163 and 265a.163 (relating to failure to maintain adequate bond), which states that appropriate actions may be taken "including suspending or revoking permits." The reference to "suspension" is of no effect.

The self-executing nature of regulations adopted under Act 97 makes it unnecessary for the Department to modify permits in order to incorporate new regulatory requirements. New regulations promulgated in Pennsylvania are effective with or without the permittee's consent. The Act clearly intends the regulations to be enforceable independent of inclusion in a permit condition. (35 P.S. §§ 6018.401(a), 6018.402(b)(9), 6018.610(2), 6018.610(4), 6018.610(6) and 6018.610(9).) Furthermore, the Statutory Construction Act of 1972, 1 Pa. C.S. § 1937(a) states that a reference in a statute to a regulation includes all amendments and supplements to that regulation and any new regulation substituted for a former regulation. New regulations are binding on regulated persons on

their effective date and would supercede any clearly inconsistent permit condition. While the Department is not obliged to modify permits in order to implement duly promulgated regulations, the Department will, where appropriate to resolve apparent conflicts between permit conditions and new regulations, or where site-specific applications are appropriate, modify permits to reflect new regulations, in accordance with authority in 35 P.S. § 6018.503.

In sum, the Department's authority to modify a permit under 35 P.S. § 6018.503 includes all of the grounds set forth in 40 CFR 270.41.

Public Information

35 P.S. § 6018.502(c) requires, as a general rule, that all portions of a hazardous waste facility permit application be available to the public. The only exceptions to this rule are items which, if made public, would divulge production or sales figures or methods, processes or production unique to the applicant, or would otherwise harm his competitive position by revealing trade secrets. The applicant's name and address do not fall within the exception. Therefore, under Pennsylvania's program, the names and addresses of permit applicants and permittees will be a matter of public record. Furthermore, the Department has previously interpreted Pennsylvania's Right-to-Know Law, Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1-66.4, as requiring that a permittee's name and address be provided to the public upon request. (Appendix 5)

Administrative Appeals

Pennsylvania's administrative appeal procedures following the modification, revocation and reissuance, or revocation of a permit, are somewhat different from the Federal procedures, but the same objectives are achieved by the Commonwealth's procedures as are achieved by the Federal requirements. First, it should be pointed out that in Pennsylvania, the only entity empowered to hold adjudicatory hearings regarding Department permit actions and authorized to issue adjudications which can subsequently be subjected to judicial review is the Environmental Hearing Board (EHB). This quasi-judicial tribunal of five members was created by the same 1970 statute which created the Department, and its powers and duties are set forth in Section 1921-A of the Administrative Code (71 P.S. § 510-21). The EHB is independent of the Department; its members are appointed by the Governor and confirmed by the legislature, and its staff and expenses are funded by legislative appropriation as part of the Department's budget, with EHB members' salaries set by statute and action of the Executive Board of the Commonwealth. The EHB's independent status was further codified by the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, No. 94, 35 P.S. §§ 7511-7516, which replaced the Administrative Code provisions regarding the EHB.

The EHB procedures are determined partly by the mandates of the Administrative Agency Law, which requires notice of, and opportunity for, a hearing on the record (2 Pa. C.S.A. § 504), opportunity to introduce evidence and cross-examine witnesses (2 Pa. C.S.A. § 505) and opportunity to submit briefs and make oral arguments (2 Pa. C.S.A. § 506) before adjudications of agency actions may become final. The EHB also follows the Pennsylvania Rules of Civil Procedure and its own regulations (25 Pa. Code Chapter 1021). Hearings before the EHB are adversary proceedings similar to trials, in that pre-hearing discovery is allowed, witnesses testify under oath, a stenographic transcript is made and the hearings are presided over by an EHB member or a hearing examiner appointed by the Board. Parties are usually represented by lawyers, but pro se appeals are also

allowed. See, e.g., Deake Porter v. DER, 1975 EHB 230. Appeal of EHB adjudications is to Commonwealth Court, which is one of Pennsylvania's intermediate appellate courts.

In particular, the Department is authorized to conduct all necessary procedures relating to the permit program which are listed in Consolidated Checklist C9 in Subsection VII.B below. These procedures include the reporting of noncompliance to EPA and administrative investigation and hearings on permit applications and modifications.

In the appeal of Coolspring Township, et al. v. DER, 1983 EHB 151, the appellant municipality claimed that the Department's active gathering of data prior to its grant of a permit for a sewage sludge disposal facility constituted a type of conflict of interest. In rejecting this claim, the EHB stated:

"In reviewing permit applications, it obviously is desirable that DER make its own independent check of the data furnished by the applicant, and DER's power to do so was granted by the Legislature in 35 P.S. § 6018.104(13). Therefore the Township's criticisms of DER for having gathered data used to evaluate the application are rejected as unsound. **Under 35 P.S. § 6018.104(13) it was DER's duty to do whatever it deemed necessary to guarantee that its evaluation of the permit application was based on accurate data.**" [Emphasis added]

1983 EHB 168.

Thus, 35 P.S. § 6018.104(13) has been held to represent authority for those means (hearings, site visits, geological or laboratory tests, solicitations of public comment) which the Department chooses to use in evaluating permit applications.

With respect to the Department's right to hold non-adjudicatory hearings, the case law is quite clear. After the creation of the EHB, the question arose as to whether its assumption of responsibility for adjudicatory hearings also transferred to the EHB both the Department's entire authority to hold any hearings at all, and certain decision-making powers as well. This issue was settled in Pennzoil et al. v. DER, 3 EHB 252 (1974), where the EHB stated:

"It follows that the Department, in performing the duties of the former Oil and Gas Conservation Commission **may act with or without hearing**, as it chooses - specifically, it is not required to hold a hearing prior to issuing a spacing order. The hearing on appeal before this board would then be the hearing that would satisfy the hearing requirements of the Oil and Gas Conservation Act, supra." [Emphasis added]

3 EHB 254.

The Department's practice in the solid waste management permit program has, in fact, been to hold non-adjudicatory hearings upon request before final agency action is taken on a permit application.

Under 35 P.S. § 6018.104, therefore, the Department may implement all of the EPA permit procedures set forth in Consolidated Checklist C9 and the Memorandum of Agreement ("MOA"). The Department may hold non-adjudicatory hearings according to EPA hearing procedures. It should

be noted, however, that the Department's performance of EPA hearing procedures does not accomplish the same legal result under the state administrative system as under the Federal system. As pointed out above, the Department is not authorized to hold adjudicatory hearings or issue adjudications. Except for the permit itself (which normally incorporates the entire permit application), the Department can build no record or administrative docket which can be judicially reviewed. The record which goes up on appeal to Commonwealth Court is the record established before the EHB, not the Department. Public hearings held by the Department, may accomplish the goals of assisting the Department in a thorough evaluation of a permit application and in keeping citizens informed of the progress of permit applications, but these procedures cannot give citizens an opportunity to be part of a judicially reviewable administrative record. Only an appeal to the EHB can give aggrieved citizens their day in court.

Interim Status

The two types of hazardous waste management facilities which are affected by the interim status provisions of Pennsylvania's SWMA enacted in 1980 and the regulations adopted thereunder are: (1) those disposal and treatment facilities which were permitted under the statute which was the predecessor for Act 97, and (2) those storage and treatment facilities which had no permits and needed none until the enactment of Act 97.

Because most hazardous waste storage and treatment facilities were required to obtain a permit for the first time under Act 97, the legislature in 35 P.S. § 6018.404(a) provided an "interim status" under which such facilities could lawfully continue operating without a permit until final departmental action on their permit applications. 35 P. S. § 6018.404(a) authorizes the continued operation of storage and treatment facilities under the conditions set forth in that section. 35 P.S. § 6018.404(a)(4) states, however: "In no instance shall such person or municipality continue to store or treat hazardous wastes without obtaining a permit from the Department within two years after the date of enactment hereof." 25 Pa. Code Chapter 265a sets forth operating and other standards for such interim status facilities.

Permits were required for all disposal facilities and some treatment facilities under the predecessor statute, and continued operation pursuant to these old permits is authorized by 35 P.S. § 6018.1001 unless and until such permits are modified, amended, suspended, or revoked. For these already-permitted facilities, the RCRA permitting process is a re-permitting which will lead to revocation of the old permit at the time the new permit is denied or issued.

As noted above, 35 P.S. § 6018.404(a) states that hazardous waste treatment and storage facilities cannot operate more than two years after the date of enactment of Act 97 without obtaining a permit. A discussion of the legal status of existing hazardous waste management facilities follows.

1. Previously Permitted Facilities

The continued operation of treatment and disposal facilities which already have permits issued under Act 97's predecessor is clearly authorized, since these old permits continue in effect until modified, amended, or revoked. Because all existing permits will ultimately be re-issued or denied, the 25 Pa. Code Chapter 265a interim status standards apply to such facilities until the re-permitting process is complete. 25 Pa. Code Chapter 264a standards apply to permittees after permits are issued under Act 97.

Any facility qualifying for interim status under the Commonwealth's program would also qualify for Federal interim status. No disposal facility may qualify for interim status unless it has a current solid waste permit.

It should be emphasized that nothing in Act 97 or the regulations establishes a deadline for the re-permitting of facilities which already hold permits issued under Act 97's predecessor. The two-year deadline in 35 P.S. § 6018.404(a) applies only to facilities which have not been permitted under Act 97's predecessor. DER v. William Fiore, et al., No. 3162 C.D. 1983 (Slip Op. of Jan. 30, 1984 at 9-10), appeal dismissed, 507 Pa. 134, 488 A.2d 1109 (1985) (attached as Appendix 3).

2. Existing Unpermitted Facilities

The legal status of hazardous waste treatment and storage facilities which previously have not been permitted is a more difficult issue. The question is whether these unpermitted facilities can remain in operation after the expiration of the two-year deadline contained in Section 404(a) of Act 97. This issue was raised in the case of DER v. William Fiore, et al., No. 3162 C.D. 1983, (Slip Op. of January 30, 1984), appeal dismissed, 507 Pa. 134, 488 A.2d 1109 (1985). This case was brought by a hazardous waste disposal facility operator whose permit had been suspended and who alleged that the Department's "failure" to process all treatment and storage applications by the statutory deadline entitled him to a preliminary injunction enjoining the operation of all unpermitted hazardous waste treatment and storage facilities in the Commonwealth. The Court found that the plaintiff had no standing to press any of his claims and dismissed the case for that reason. However, the Court noted that Section 404 of Act 97 recognizes that the hazardous waste permit process cannot be put in place to act upon applications overnight. (Slip op. at 3) The Court further noted that EPA design standards which were to be promulgated by April 21, 1978, were not promulgated until July 26, 1982, over four years after the statutory deadline. Pennsylvania's design standards, in turn, were not published until September 4, 1982. The Court agreed with Pennsylvania's position that the failure of EPA to meet its RCRA deadlines for promulgating regulations made it impossible for Pennsylvania to adopt equivalent regulations within the deadline prescribed in Act 97.

Because the legislative intent was to allow such facilities to operate for a limited time, and because events beyond the control of the permittee and the Department made it impossible for such facilities to obtain permits within the statutory deadline, such facilities retain interim status despite the deadline, and the Courts would therefore allow the continued operation of such facilities until final disposition of their permit applications. Continued compliance with the interim status standards in Chapter 265a will assure the adequate protection of public health and the environment during this time.

Further, anyone challenging the Department's refusal to close a specific treatment or storage site would be thwarted by a well established body of case law holding that the exercise of prosecutorial discretion by a state agency is not judicially reviewable.

As shown in Consolidated Checklist C9 below, Pennsylvania has provisions that are identical to the Federal interim status requirements. At 25 Pa. Code § 270a.1(a), the Commonwealth has adopted by reference the Federal 40 CFR Part 270, Subpart G requirements.

**B. Consolidated Checklist C9 — 40 CFR Parts 124 and 270, as of June 30, 1998
and Commonwealth Analogs**

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 270a the following provisions limit the applicability of the substitution of terms: §§ 270a.2(b), 270a.5, 270a.6, 270a.10(a), and 270a.72. No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C9

**EPA Administered Permit Programs: The Hazardous Waste
Permit Program; Procedures for Decision Making
40 CFR Parts 270 and 124 as of July 1, 1998**

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

**PART 270 - EPA ADMINISTERED PERMIT PROGRAMS:
THE HAZARDOUS WASTE PERMIT PROGRAM**

SUBPART A - GENERAL INFORMATION

Purpose and scope of these regulations	270.1 except (c)(2)(i) and (v)	270a.1(a)	X			
Specific exclusions	270.1(c)(2)(i) and (v)	270a.1(a) 270a.1(b)			X	

Legal Statement Comment: Pennsylvania has added language at § 270a.1(b) requiring certain facilities, which are exempt from the permit requirements under the Federal program, to obtain a permit under the Commonwealth's program. Such facilities may obtain a permit-by-rule pursuant to § 270a.60. Specifically, generators addressed by 40 CFR 270.1(c)(2)(i) that treat hazardous waste on-site in compliance with the accumulation requirements in 40 CFR 262.34 are not required to obtain a permit under the Federal program but are subject to Pennsylvania's permit requirements. Note that generators that store but do not treat hazardous waste on site in compliance with the accumulation requirements in 40 CFR 262.34 are exempt from the permit requirements in Pennsylvania. In addition, owners and operators of elementary neutralization units or wastewater treatment units addressed by 40 CFR 270.1(c)(2)(v) are not subject to the Federal permit requirements if they meet the Federal definition in 40 CFR 260.10. Pennsylvania does not exclude these units from the Commonwealth's permit requirements. This makes the Commonwealth's program more stringent.

Effect of compliance with permit by rule	No Federal analog in 270.1	270a.1(c)	D			
--	----------------------------	-----------	---	--	--	--

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: The language in § 270a.1(c) clarifies that facilities eligible to operate under a permit by rule are deemed to have hazardous waste management permits when all applicable requirements for the permit by rule have been satisfied.

Definitions	270.2 except definitions for "disposal", "person", and "storage"	270a.1(a) 270a.2(b)	X			
Definitions of "disposal", "person", and "storage"	270.2	No analogs in Chapter 270a per 270a.2(a)	The Commonwealth has not included definitions of "disposal", "person", and "storage" in Chapter 270a. Pennsylvania does define these terms in Chapter 260a. See Consolidated Checklist C1 for a discussion of equivalency.			
Considerations under Federal law	270.3	No analog per 270a.3	This provision was not included in the incorporation by reference since it is only applicable in the context of the Federal program.			
Payment of fees	No Federal analog in Part 270	270a.3				X

Legal Statement Comment: The payment of fees by hazardous waste management facilities is beyond the scope of the Federal program.

Effect of a permit	270.4	270a.1(a) 270a.4			X	
--------------------	-------	---------------------	--	--	---	--

Legal Statement Comment: The Commonwealth explains in § 270a.4 that nothing contained in the incorporated language of 40 CFR 270.4 prohibits the Department from taking any enforcement action under section 602 of the SWMA which authorizes the Department to take enforcement actions against permitted facilities for any violation of the SWMA or any regulations promulgated under the SWMA. Pennsylvania is more stringent because the permit cannot be used as a shield from enforcement of the statute or regulations.

Noncompliance and program reporting by the Director	270.5	270a.1(a) 270a.5	X			
---	-------	---------------------	---	--	--	--

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
References	270.6	270a.1(a) 270a.6	X			

SUBPART B - PERMIT APPLICATION

General application requirements	270.10 except (e) (2), (e)(3), (f)(2), (f)(3), and (g)(1) (i)	270a.1(a)	X			
	270.10(e)(2), (e) (3), (f)(2), (f)(3), and (g)(1)(i)	270a.1(a) 270a.10(a)	X			
Hazardous waste management fees	No Federal analog in Part 270	270a.10(b)				X

Legal Statement Comment: Pennsylvania requires applicants to pay hazardous waste management fees. Such fees are beyond the scope of the Federal program.

Signatories to permit applications and reports	270.11	270a.1(a)	X			
Confidentiality of information	270.12(a)	270a.12(1)-(4)	D			

Legal Statement Comment: The Commonwealth's provision is equivalent to 40 CFR 270.12(a), however, the Commonwealth references its own procedures for making claims of confidentiality in § 270a.12(2) instead of the Federal procedures located in 40 CFR Part 2. Note that Pennsylvania is not seeking authorization for Availability of Information (AI) at this time.

Name and address of applicant or permittee	270.12(b)	No analog per 270a.12	D			
---	-----------	--------------------------	---	--	--	--

Legal Statement Comment: Pennsylvania does not have an analog to this Federal provision which clarifies that claims of confidentiality for the name and address of any applicant or permittee will be denied. However, Pennsylvania would always deny such claims because under no circumstance would disclosure of such information result in substantial harm to the competitive position of the applicant or permittee.

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Contents of part A of the permit application	270.13	270a.1(a)	X			
Demonstration of compliance with siting requirements	No Federal analog in 270.13	270a.13			X	X

Legal Statement Comment: The Commonwealth requires that Part A of the application include information to demonstrate compliance with the siting criteria in Chapter 269a. These requirements are either more stringent or broader in scope than the Federal program.

Contents of part B: General requirements	270.14 except (b) (20) and (b)(22)	270a.1(a)	X			
Information necessary to carry out duties under other Federal laws	270.14(b)(20)	No analog per 270a.14(b)	Pennsylvania does not incorporate by reference 40 CFR 270.14(b)(20) because it only applies in the context of the Federal program.			
Preapplication meeting	270.14(b)(22)	270a.1(a) 270a.14(a)	D			

Legal Statement Comment: Pennsylvania requires that the permit applicant also comply with the preapplication public meeting and notice requirements in § 270a.83. While this requirement is not included in 40 CFR 270.14, it is required in 40 CFR Part 124; therefore, the inclusion of the provision has no affect on equivalency.

Specific part B information requirements for containers	270.15	270a.1(a)	X			
Specific part B information requirements for tank systems	270.16	270a.1(a)	X			
Specific part B information requirements for surface impoundments	270.17	270a.1(a)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Specific part B information requirements for waste piles	270.18	270a.1(a)	X			
Specific part B information requirements for incinerators	270.19	270a.1(a)	X			
Specific part B information requirements for land treatment facilities	270.20	270a.1(a)	X			
Specific part B information requirements for landfills	270.21	270a.1(a)	X			
Specific part B information requirements for boilers and industrial furnaces burning hazardous waste	270.22	270a.1(a)	X			
Specific part B information requirements for miscellaneous units	270.23	270a.1(a)	X			
Specific part B information requirements for process vents	270.24	270a.1(a)	X			
Specific part B information requirements for equipment	270.25	270a.1(a)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Special part B information requirements for drip pads	270.26	270a.1(a)	X			
Specific part B information requirements for air emission controls for tanks, surface impoundments, and containers	270.27	270a.1(a)	X			
[Reserved]	270.28	270a.1(a)	X			
Permit denial	270.29	No analog per 270a.29(a)			X	

Legal Statement Comment: The Commonwealth does not have an analog to 40 CFR 270.29 which allows for partial denial of a permit application. Pennsylvania is more stringent.

SUBPART C - PERMIT CONDITIONS

Conditions applicable to all permits	270.30	270a.1(a)	X			
Requirements for recording and reporting of monitoring results	270.31	270a.1(a)	X			
Establishing permit conditions	270.32 except (a), (b)(2), and (c)	270a.1(a)	X			
Establish conditions on a case-by-case basis under 270.50, 270.33(a), and 270.31	270.32(a)	No analog per 270a.32	D			

Legal Statement Comment: Although the Commonwealth does not have an analog to 40 CFR 270.32(a), the regulations include analogs to 40 CFR 270.50, 270.33(a), and 270.31. Thus, Pennsylvania's intent is to address such requirements in permits, as required in its code.

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Conditions necessary to protect human health and the environment.	270.32(b)(2)	270a.1(a) 270a.32	D			

Legal Statement Comment: Pennsylvania has modified the incorporation by reference of 40 CFR 270.32(b)(2) by replacing the reference to "section 3005 of this act" with a reference to the Commonwealth's permit authority.

Applicable requirements	270.32(c)	No analogs per 270a.32	D			
-------------------------	-----------	------------------------	---	--	--	--

Legal Statement Comment: Although the Commonwealth does not have an analog to 40 CFR 270.32(c), Pennsylvania intends to include all necessary conditions in a permit as required by regulation or statute in effect prior to the final administrative disposition of the permit.

Schedules of compliance	270.33	270a.1(a)	X			
-------------------------	--------	-----------	---	--	--	--

SUBPART D - CHANGES TO PERMIT

Transfer of permits	270.40	270a.1(a)	X			
Modification or revocation and reissuance of permits	270.41	270a.1(a) 270a.41 introductory paragraph			X	

Legal Statement Comment: In the introductory paragraph of § 270a.41, the regulations clarify that Pennsylvania's procedures for permit modification, termination, and revocation and reissuance are found in § 270a.41 instead of 40 CFR Part 124. Thus, all references to 40 CFR Part 124 in the incorporated by reference text of 40 CFR 270.41 should be read as references to the analogous provision in § 270a.41. In addition, the Commonwealth is more stringent because it is not limited to the reasons for modification, termination, and revocation and reissuance identified in 40 CFR 270.41 - 270.43.

Permit modification at the request of the permittee	270.42	270a.1(a) 270a.42	D			
---	--------	----------------------	---	--	--	--

Legal Statement Comment: In § 270a.42, the regulations identify where permitting procedures can be found in Chapter 270a when references are made in the incorporated text to Federal procedural provisions in 40 CFR Part 124. This clarifies that the regulated community should use the applicable Commonwealth procedures in Chapter 270a instead of the Federal provisions that are referenced in the incorporated text of 40 CFR 270.42.

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Termination of permits	270.43(a)	270a.1(a)	X			
Procedures for termination	270.43(b)	270a.1(a) 270a.43			X	

Legal Statement Comment: In § 270a.43, the regulations clarify that the Commonwealth's procedures for permit termination are found in § 270a.41 instead of 40 CFR Part 124. Thus, all references to 40 CFR Part 124 in the incorporated by text of 40 CFR 270.43 should be read as references to the analogous provision in § 270a.41. Note that § 270.41 is more stringent as discussed in the Legal Statement Comment for that provision. Thus, this provision is more stringent, too.

SUBPART E - EXPIRATION AND CONTINUATION OF PERMITS

Duration of permits	270.50	270a.1(a)	X			
Continuation of expiring permits	270.51	No analog per 270a.51	This provision is not incorporated by reference because it applies to EPA permits and is not applicable in the context of the Commonwealth's program.			

SUBPART F - SPECIAL FORMS OF PERMITS

Permits by rule	270.60	270a.1(a) 270a.60(a)	D			
-----------------	--------	-------------------------	---	--	--	--

Legal Statement Comment: The Commonwealth incorporates by reference the permits by rule provisions found in the Federal program. In addition, the provision at § 270a.60(a) clarifies that additional permits by rule are contained in § 270a.60(b).

Additional permits by rule	No Federal analogs in Part 270	270a.60(b)			X	
-------------------------------	--------------------------------------	------------	--	--	---	--

Legal Statement Comment: Pennsylvania's program is more stringent than the Federal program because the Commonwealth requires an operating permit for the following activities/facilities: (1) elementary neutralization units and wastewater treatment units, (2) generators that treat waste on-site in accordance with the accumulation requirements in 40 CFR 262.34, and (3) facilities that treat hazardous waste prior to reclamation or recycling. Such activities and/or facilities are exempt from the permit requirements in the Federal program under specified conditions. The Commonwealth's regulations contain permits by rule for such facilities in § 270a.60(b).

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
Variances from specific provisions of additional permits-by-rule	No Federal analog in Part 270	270a.60(c)	D		X	

Legal Statement Comment: The Department may grant a variance, upon written application, from any of the conditions of the Commonwealth-only permits by rule which are more stringent than the Federal program, which does not require a permit for the affected activities/facilities. Any variance granted by the Department must not result in a less stringent standard than if the variance was not granted. No variances will be granted if the result is regulation that is less stringent than exists under the Federal program. Therefore, the result of the variance can be equivalent or more stringent.

Emergency permits	270.61	270a.1(a)	X			
Hazardous waste incinerator permits	270.62	270a.1(a) 270a.62	D			

Legal Statement Comment: In § 270a.62, the regulations clarify that the Commonwealth's standards relating to public notice and hearings are found in § 270a.80, instead of 40 CFR 124.10 as referenced in the incorporated text of 40 CFR 270.62.

Permits for land treatment demonstrations using field test or laboratory analyses	270.63	270a.1(a)	X			
Interim permits for UIC wells	270.64	No analog per 270a.64	This provision is not incorporated by reference because it only applies in jurisdictions where an EPA approved UIC program does not exist. Pennsylvania has such a program.			
Research, development and demonstration permits	270.65	270a.1(a)	X			
Permits for boilers and industrial furnaces burning hazardous waste	270.66	270a.1(a) 270a.66	D			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: In § 270a.66, the regulations clarify that the Commonwealth's standards relating to public notice and hearings are found in § 270a.80, instead of 40 CFR 124.10 as referenced in the incorporated text of 40 CFR 270.66.

SUBPART G - INTERIM STATUS

Qualifying for interim status	270.70	270a.1(a)	X			
Operation during interim status	270.71	270a.1(a)	X			
Changes during interim status	270.72 except (a)(5) and (b)(5)	270a.1(a)	X			
	270.72(a)(5) and (b)(5)	270a.1(a) 270a.72	X			
Termination of interim status	270.73	270a.1(a)	X			

PART 124 - PROCEDURES FOR DECISION MAKING

SUBPART A - GENERAL PROGRAM REQUIREMENTS

if permit required, then must submit application; exceptions; when processing shall begin; signature and certification requirements	124.3(a)(1)	270a.10(c)(1)	X			
	124.3(a)(2)	270a.10(c)(2)	X			
	124.3(a)(3)	270a.10(c)(2)	X			
review for completeness; deficiencies; site visit; effective date	124.3(c)-(f)	270a.10(c)(3)-(6)	X			

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has equivalent analogs to 40 CFR 124.3(c)-(f).

MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
who initiates a modification, revocation and reissuance or termination of permit; reasons these actions can be taken	124.5(a)	270a.41(1)	X			
Denial of request	124.5(b)	270a.41(2)	X			

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has an equivalent analog to 40 CFR 124.5(b).

modify or revoke and reissue procedures:	124.5(c)(1)	270a.41(3)	X			
only those conditions to be modified shall be reopened; entire permit is reopened if permit revoked and reissued	124.5(c)(2)	270a.41(4)	X			
minor modifications are not subject to 124.5	124.5(c)(3)	270a.41(6)			X	

Legal Statement Comment: The Federal program only subjects Class 3 modifications to the requirements found in 40 CFR 124.5. Pennsylvania is more stringent because Class 2 modifications are also subject to the Commonwealth's requirements that are analogous to 40 CFR 124.5.

termination procedures; notice of intent to terminate	124.5(d)	270a.41(5)	X			
---	----------	------------	---	--	--	--

DRAFT PERMITS

decision to prepare draft or deny application	124.6(a)	270a.10(c)(7)	X			
notice of intent to deny	124.6(b)	270a.10(c)(8) 270a.29(b)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has an equivalent analog to 40 CFR 124.6(b) at both § 270a.10(c)(8) and § 270a.29(b).

@

contents of a draft permit	124.6(d)	270a.10(c)(9)	X			
	124.6(d)(1)	270a.10(c)(9)(i)	X			
	124.6(d)(2)	270a.10(c)(9)(ii)	X			
	124.6(d)(3)	270a.10(c)(9)(iii)	X			
	124.6(d)(4)(i)	No Federal analog	D			

Legal Statement Comment: While Pennsylvania does not have an analog to 40 CFR 124.6(d)(4)(i), the Commonwealth does require the Director to include the conditions of 40 CFR 270.30 at §270a.10(c)(9)(i).

@

statement of basis or fact sheet accompanies draft permit; available to public; public hearing; issue final decision; respond to comments; appeals	124.6(e)	270a.10(c)(10)	X			
--	----------	----------------	---	--	--	--

STATEMENT OF BASIS

statement of basis	124.7	270a.10(c)(11)	X			
--------------------	-------	----------------	---	--	--	--

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has an equivalent analog to 40 CFR 124.7.

FACT SHEET

@

what the fact sheet must be prepared for; what the sheet will set forth; who receives fact sheet	124.8(a)	270a.10(c)(12)(i)	X			
--	----------	-------------------	---	--	--	--

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
<p>@</p> <p>what the fact sheet shall include</p>	124.8(b)	270a.10(c)(12) (ii)	X			
	124.8(b)(1)	270a.10(c)(12) (ii)(A)	X			
	124.8(b)(2)	270a.10(c)(12) (ii)(B)	X			
	124.8(b)(4)	270a.10(c)(12) (ii)(C)	X			
	124.8(b)(5)	270a.10(c)(12) (ii)(D)	X			
	124.8(b)(6)	270a.10(c)(12) (ii)(E)	X			
	124.8(b)(6)(i)-(iii)	270a.10(c)(12) (ii)(E)(I)-(III)	X			
	124.8(b)(7)	270a.10(c)(12) (ii)(E)(IV)	X			
PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD						
<p>@</p> <p>what the Director must give public notice of</p>	124.10(a)(1)	270a.80(a)	X			
	124.10(a)(1)(i)	270a.80(a)(1)	X			
	124.10(a)(1)(ii)	270a.80(a)(2)	X			
	124.10(a)(1)(iii)	270a.80(a)(3)	X			
	No analog in 124.10(a)(1)	270a.80(a)(4)			X	

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has an equivalent analog to 40 CFR 124.10(a)(1)(i) at § 270a.80(a)(1). In addition, the Commonwealth is more stringent at § 270a.80(a)(4) by requiring the Director to provide public notice whenever a closure/post-closure plan has been received.

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
@ timing of public notice	124.10(b)(1)	270a.80(b)	X			
	124.10(b)(2)	270a.80(c)	X			
@ how public notice shall be given	124.10(c)	270a.80(d)	X			
@ by mail; persons to whom notice must be mailed	124.10(c)(1)	270a.80(d)(1)	X			
	124.10(c)(1)(i)	270a.80(d)(1) (i)	X			
	124.10(c)(1)(ii)	270a.80(d)(1) (ii)	X			
	124.10(c)(1)(iii)	270a.80(d)(1) (iii)	X			
	124.10(c)(1)(ix)	270a.80(d)(1) (iv)	X			
	124.10(c)(1)(x) (A)&(B)	270a.80(d)(1) (v) and (vi)	X			
@ publication in a newspaper	124.10(c)(2)(i)	No analog	This Federal provision does not apply to hazardous waste permits.			
	124.10(c)(2)(ii)	270a.80(d)(2)	X			
@ legal notice to public under State law	124.10(c)(3)	270a.80(d)(3)	X			
@ any other method to give notice to persons potentially affected	124.10(c)(4)	270a.80(d)(4)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
minimum information requirements contained in a public notice	124.10(d)(1)	270a.80(e)	X			
	124.10(d)(1)(i)	270a.80(e)(1)	X			
	124.10(d)(1)(ii)	270a.80(e)(2)	X			
	124.10(d)(1)(iii)	270a.80(e)(3)	X			
	124.10(d)(1)(iv)	270a.80(e)(4)	X			
	124.10(d)(1)(v)	270a.80(e)(5)	X			
	124.10(d)(1)(vi)	No analog	This Federal provision only applies to EPA issued permits.			
public notices for hearings; contents	124.10(d)(1)(ix)	270a.80(e)(6)	X			
	124.10(d)(2)	270a.80(f)	X			
	124.10(d)(2)(i)	270a.80(f)(1)	X			
	124.10(d)(2)(ii)	270a.80(f)(2)	X			
all persons identified in 124.10(c)(1)(i)-(iv) must be mailed fact sheet, the permit application and the draft permit	124.10(d)(2)(iii)	270a.80(f)(3)	X			
	124.10(e)	270a.80(g)	X			
PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS						
procedures	124.11	270a.81(a)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste
Permit Program; Procedures for Decision Making
40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

PUBLIC HEARINGS

when director must or may hold a public hearing; how public notice shall be given	124.12(a)(1)	270a.81(b)(1)	X			
	124.12(a)(2)	270a.81(b)(2)	X			
	124.12(a)(3)	270a.81(b)(3) and (4)	X			
	124.12(a)(4)	270a.81(b)(5)	X			
submission of oral or written statements and data concerning the draft permit	124.12(c)	270a.81(b)(6)	X			
tape recording or written transcript of the hearing	124.12(d)	270a.81(b)(7)	X			

Legal Statement Comment: Although not required for authorization under 40 CFR 271.14, the Commonwealth has equivalent analogs to 40 CFR 124.12(c) and (d) at § 270a.81(b)(6) and (7).

RESPONSE TO COMMENTS

Director's response to comments and what it must contain	124.17(a)	270a.10(c)(13)	X			
	124.17(a)(1)	270a.10(c)(13) (i)	X			
	124.17(a)(2)	270a.10(c)(13) (ii)	X			
response to comments available to the public	124.17(c)	270a.10(c)(14)	X			

SUBPART B - SPECIFIC PROCEDURES APPLICABLE TO RCRA PERMITS

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

Legal Statement Comment: Revision Checklist 148 addresses procedures for decision making in the hazardous waste permit program covered in 40 CFR 124.31 - 124.33. Although Pennsylvania has an analog for 40 CFR 124.31 at 25 Pa. Code § 270a.83 and an analog for 40 CFR 124.33 at 25 Pa. Code § 270a.84, it does not have an analog to 40 CFR 124.32. Thus, the Commonwealth does not have analogs to all provisions in Revision Checklist 148. Because EPA cannot authorize partial checklists, the Commonwealth is not seeking authorization for Revision Checklist 148 at this time.

PRE-APPLICATION PUBLIC MEETING AND NOTICE

Applicability	124.31(a)	270a.83(a)			X	
---------------	-----------	------------	--	--	---	--

Legal Statement Comment: Pennsylvania's program is more stringent because a Class 3 or Class 2 modification is considered a "significant change" for purposes of the applicability of the preapplication meeting requirements. The Federal regulations only consider Class 3 modifications as "significant".

prior to submission of part B permit application, the applicant must hold at least one public meeting; the applicant shall post a sign-in sheet for attendees	124.31(b)	270a.83(b)	X			
the applicant shall submit a summary of the meeting, a list of the attendees and their addresses, and copies of any written comments or materials submitted at the meeting as part of the part B application, in accordance with 270.14(b)	124.31(c)	270a.83(c)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
the applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting; must maintain and provide documentation of public notice to the permitting agency upon request	124.31(d)	270a.83(d)	X			
forms by which the applicant shall provide public notice	124.31(d)(1)	270a.83(d)(1)	X			
	124.31(d)(1)(i)	270a.83(d)(1) (i)	X			
	124.31(d)(1)(ii)	270a.83(d)(1) (ii)	X			
	124.31(d)(1)(iii)	270a.83(d)(1) (iii)	X			
	124.31(d)(1)(iv)	270a.83(d)(1) (iv)	X			
information that the notices required under 124.31(d)(1) must include	124.31(d)(2)	270a.83(d)(2)	X			
	124.31(d)(2)(i)	270a.83(d)(2) (i)	X			
	124.31(d)(2)(ii)	270a.83(d)(2) (ii)	X			
	124.31(d)(2)(iii)	270a.83(d)(2) (iii)	X			
	124.31(d)(2)(iv)	270a.83(d)(2) (iv)	X			
	124.31(d)(2)(v)	270a.83(d)(2) (v)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
PUBLIC NOTICE REQUIREMENTS AT THE APPLICATION STAGE						
applicability	124.32(a)	No analog				
notification at application submittal	124.32(b)	No analog				
the Director shall provide public notice as set forth in 124.10(c)(1)(ix) and notice to appropriate units of State and local government as set forth in 124.10(c)(1) (x), that a part B application has been submitted	124.32(b)(1)	No analog				
notice shall be published within a reasonable period of time after the application is received by the Director; information the notice must include	124.32(b)(2)	No analog				
	124.32(b)(2)(i)	No analog				
	124.32(b)(2)(ii)	No analog				
	124.32(b)(2)(iii)	No analog				
	124.32(b)(2)(iv)	No analog				
	124.32(b)(2)(v)	No analog				
	124.32(b)(2)(vi)	No analog				

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste
Permit Program; Procedures for Decision Making
40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
concurrent with the notice required under 124.32(b), the Director must place the permit application and any support documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office	124.32(c)	No analog				

INFORMATION REPOSITORY

Applicability; definition of "hazardous waste management units"	124.33(a)	270a.84(a)	X			
the Director may assess the need, on a case-by-case basis, for an information repository; he shall consider a variety of factors; if a need is determined, the Director shall notify the facility to establish and maintain a repository	124.33(b)	270a.84(b)	X			
the repository shall contain all documents, reports, data, and information deemed necessary by the Director	124.33(c)	270a.84(c)	X			

CONSOLIDATED CHECKLIST C9

EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making 40 CFR Parts 270 and 124 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
the repository shall be located and maintained at a site chosen by the facility; if the site is unsuitable, the Director shall specify a more appropriate site	124.33(d)	270a.84(d)	X			
the Director shall specify requirements for informing the public about the repository; at a minimum, the Director shall require the facility to provide a written notice about the repository to all persons on the facility mailing list	124.33(e)	270a.84(e)	X			
the facility owner or operator shall be responsible for maintaining and updating the repository; the Director may close the repository at his discretion based on factors in 124.33(b)	124.33(f)	270a.84(f)	X			

@ Procedural requirement. For explanation, see the instructions for the Consolidated Base Program Checklists at the beginning of Appendix K.

These provisions were not included in Base Program Checklist V, but were listed as provisions under 271.14 which States must have the legal authority to implement. Thus, if States do not have these provisions in their code, they must demonstrate legal authority to carry them out.

VIII. REQUIREMENTS FOR USED OIL MANAGEMENT

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR 271.26, as amended on September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

A. State statutes and regulations do not provide used oil management standards equivalent to 40 CFR Part 279 for: 1) used oil generators, 2) used oil collection centers and aggregation points, 3) used oil transporters and transfer facilities, 4) used oil processors and re-refiners, 5) used oil burners who burn off-specification used oil for energy recovery, 6) used oil fuel marketers; 7) standards for use of as a dust suppressant and disposal of used oil, and 8) other requirements to the extent they are included in 40 CFR Part 279. These standards for used oil management are as indicated in Consolidated Checklist C10 which includes changes made by Revision Checklists 112, 122, 130, and 166.

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Part 279, as amended September 10, 1992 (57 FR 41566), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), March 4, 1994 (59 FR 10550), May 6, 1998 (63 FR 24963), and July 14, 1998 (63 FR 37780).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104(1) and (6); 6018.105(a); and 6018.401(a).

Remarks of the General Counsel

The Commonwealth's regulations for used oil management standards are currently found in 25 Pa. Code Chapter 266a, Subchapter E. The Department published proposed rules for the management of waste oil at 29 Pa. Bulletin 1975 (April 10, 1999); that regulation should be finalized sometime in late 2000. Pennsylvania has the necessary authority to promulgate regulations for used oil and to prohibit the use of waste oil or other materials contaminated with hazardous wastes as a dust suppressant. In addition to the Commonwealth's general authority at 35 P.S. § 6018.102, 35 P.S. §§ 6018.104(1) and (6), 6018.105(a) and 6018.401(a) make it illegal to store, transport, treat, or dispose of waste unless authorized by the rules of the Department. However, the Commonwealth has not adopted the 40 CFR Part 279 regulations and is not currently seeking authorization for the recycled used oil management standards in 40 CFR Part 279, as addressed by Revision Checklists 112, 122, 130 and 166.

IX. DELETED LEGALLY OBSOLETE RULES

A. State statutes and regulations include changes to remove legally obsolete rules as indicated by Revision Checklist 144 and included in Consolidated Checklists C2, C7 and C9.

Federal Authority: See the Preamble for Rule; 40 CFR 261.31(a), 266.103(c)(5), 266.104(f)-(h), 270.2, 270.10(e)(4), 270.10(f)(2), 270.10(g)(1), as amended June 29, 1995 (60 FR 33912).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104 and 6018.105.

25 Pa. Code §§ 261a.1(a), 266a.1(a) and 270a.1(a), effective May 1, 1999.

Remarks of the General Counsel

35 PS. §§ 6018.102, 6018.104 and 6018.105 give the Department the broad authority to administer the solid waste management program and to adopt rules and regulations to accomplish the purposes and carry out the purposes of the Commonwealth's Solid Waste Management Act. Pennsylvania has adopted and has incorporated by reference the provisions addressed by this checklist.

X. UNIVERSAL WASTES

A. State statutes and regulations provide universal waste standards equivalent to 40 CFR Part 273 for: 1) small quantity generators, 2) large quantity handlers, 3) transporters 4) destination facilities, 5) imports of universal wastes, and 6) petitions to include other wastes under the Part 273 requirements. These standards for universal waste management are as indicated in Revision Checklists 142A-142E, and included in Consolidated Checklist C11.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR Part 273, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.104 and 6018.105.

25 Pa. Code Chapter 266b, effective May 1, 1999

Remarks of the General Counsel

35 PS. §§ 6018.102, 6018.104 and 6018.105 give the Department the broad authority to administer the solid waste management program and to adopt rules and regulations to accomplish the purposes and to carry out the purposes of the SWMA. At 25 Pa. Code § 266b.1, Pennsylvania has adopted and has incorporated by reference the 40 CFR Part 273 provisions for universal waste management, as indicated in Consolidated Checklist C11 in Subsection X.B below, subject to the modifications documented in that Checklist.

B. Consolidated Checklist C11 — 40 CFR Part 273 as of June 30, 1998 and Commonwealth Analogs

Legal Statement Comment: Section 260a.3 modifies the incorporation by reference of Federal provisions by substituting Commonwealth terms for Federal terms. There are, however, occasions where such substitutions may not be appropriate. In those instances, the Commonwealth's code specifically excludes certain Federal provisions that have been incorporated by reference from the substitution of terms. In Chapter 266b the following provisions limit the applicability of the substitution of terms: §§ 266b.30(b) and 266b.50(b). No comment was made in the body of this checklist regarding these provisions since they have no substantive effect on equivalency.

CONSOLIDATED CHECKLIST C11

Standards for Universal Waste Management
40 CFR PART 273 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEAL TH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART A--GENERAL

Scope	273.1	266b.1	X			
Applicability--batteries	273.2	266b.1	X			
Applicability--pesticides	273.3	266b.1	X			
Applicability--mercury thermostats	273.4	266b.1	X			
Applicability--household and conditionally exempt small quantity generator waste	273.5	266b.1	X			
Definitions	273.6	266b.1	X			

SUBPART B--STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

Applicability	273.10	266b.1 266b.10	X			
---------------	--------	-------------------	---	--	--	--

Legal Statement Comment: In § 266b.10, the Commonwealth's regulations clarify that a small quantity handler of universal waste complying with Subpart B of 40 CFR Part 273 is not required to obtain a permit.

Prohibitions	273.11	266b.1	X			
Notification	273.12	266b.1	X			
Waste management	273.13	266b.1	X			
Labeling/marketing	273.14	266b.1	X			
Accumulation time limits	273.15	266b.1	X			
Employee training	273.16	266b.1	X			
Response to releases	273.17	266b.1	X			
Off-site shipments	273.18	266b.1	X			

CONSOLIDATED CHECKLIST C11

Standards for Universal Waste Management 40 CFR PART 273 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
Tracking universal waste shipments	273.19	266b.1	X			
Exports	273.20	266b.1	X			

SUBPART C--STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE

Applicability	273.30	266b.1 266b.30(a)	X			
---------------	--------	----------------------	---	--	--	--

Legal Statement Comment: In § 266b.30(a), the Commonwealth's regulations clarify that a large quantity handler of universal waste complying with Subpart C of 40 CFR Part 273 is not required to obtain a permit.

Prohibitions	273.31	266b.1	X			
Notification	273.32 except (a) (3)	266b.1	X			
Notification as required by 40 CFR Part 165	273.32(a)(3)	266b.1 266b.30(b)	X			
Waste management	273.33	266b.1	X			
Labeling/markings	273.34	266b.1	X			
Accumulation time limits	273.35	266b.1	X			
Employee training	273.36	266b.1	X			
Response to releases	273.37	266b.1	X			
Off-site shipments	273.38	266b.1	X			
Tracking universal waste shipments	273.39	266b.1	X			
Exports	273.40 except (b) and (c)	266b.1	X			
EPA Acknowledgment of Consent	273.40(b) and (c)	266b.1 266b.30(b)	X			

CONSOLIDATED CHECKLIST C11

Standards for Universal Waste Management 40 CFR PART 273 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

SUBPART D--STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS

Applicability	273.50	266b.1	X			
Transporters of universal waste deemed to have a license	No Federal analog in Part 273	266b.50(a)				X

Legal Statement Comment: The provision at § 266b.50(a) clarifies that universal waste transporters complying with Subpart D of 40 CFR Part 273 are deemed to have a license for the transportation of universal waste. Transporter licensing is beyond the scope of the Federal program.

Prohibitions	273.51	266b.1	X			
Waste management	273.52	266b.1	X			
Accumulation time limits	273.53	266b.1	X			
Response to releases	273.54	266b.1	X			
Off-site shipments	273.55	266b.1	X			
Exports	273.56	266b.1 266b.50(b)	X			

SUBPART E--STANDARDS FOR DESTINATION FACILITIES

Applicability	273.60 except (b)	266b.1	X			
Applicability	273.60(b)	No analog per 266b.60			X	

Legal Statement Comment: Pennsylvania does not have an analog to 40 CFR 273.60(b) which limits the applicability of the permitting requirements to those facilities that store universal waste prior to recycling. The Commonwealth is more stringent by requiring all facilities that treat universal waste prior to recycling to obtain a permit.

Off-site shipments	273.61	266b.1	X			
Tracking universal waste shipments	273.62	266b.1	X			

CONSOLIDATED CHECKLIST C11

Standards for Universal Waste Management
40 CFR PART 273 as of July 1, 1998

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS COMMONWEALTH CITATION	COMMONWEALTH ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
SUBPART F--IMPORT REQUIREMENTS						
Imports	273.70	266b.1	X			
SUBPART G--PETITIONS TO INCLUDE OTHER WASTES UNDER 40 CFR PART 273						
General	273.80	266b.1	X			
Factors for Petitions to include other wastes under 40 CFR part 273	273.81	266b.1	X			

XI. INSPECTIONS

State law provides authority for officers engaged in compliance evaluation activities to enter any conveyance, vehicle, facility or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, monitor or otherwise investigate compliance with the State program including compliance with permit terms and conditions and other program requirements. (States whose law requires a search warrant prior to entry conform with this requirement.)

Federal Authority: RCRA §3007; 40 CFR 271.15.

Citation of Laws and Regulations; Date of Enactment and Adoption

35. P.S. (1993), §§ 6018.104(7), 6018.502(b), 6018.608, 6018.609, 6018.610(7) and 6018.614.

Remarks of the General Counsel

Regulation of the solid waste industry in Pennsylvania is pervasive, and Act 97 contains a number of references to the broad rights of law enforcement agencies to inspect, monitor, or otherwise investigate to determine compliance with Act 97, the regulations, permit terms and conditions, and other program requirements. 35 P.S. § 6018.104(7) specifies that the Department's duties are to "conduct inspections and abate public nuisances to implement the purposes and provisions of this act and the rules, regulations and standards adopted pursuant to this act." In addition, 35 P.S. § 6018.608 authorizes warrantless searches by the Department, its agents and employees in order to inspect books and papers, documents, and other physical evidence, to require the production of records and reports, and to make any investigation including the taking of samples, or inspection, necessary to

ascertain the compliance or noncompliance by any person or municipality with the statute or the regulations promulgated thereunder.

35 P.S. § 6018.609 authorizes the issuance of a search warrant based upon either traditional or administrative probable cause. The warrant may, according to 35 P.S. § 6018.609, be issued for the purpose of inspecting any property, building, place, book, record, or other physical evidence, and for conducting tests or taking samples. 35 P.S. § 6018.610(7) makes it unlawful to “refuse, hinder, obstruct, delay, or threaten any agent or employee of the Department in the course of the performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.”

In addition to the above statutory provisions, each permit applicant is required to sign a landowner consent form which authorizes the Department and its agents to enter upon the facility site during the hazardous waste activity and for twenty years after final closure for inspection, pollution abatement, and pollution prevention. Further, each hazardous waste permit contains a condition providing access to the Department and its agents for the purpose of making such investigations and inspections as may be necessary to determine compliance with Act 97, the regulations promulgated thereunder, and the conditions of the permit 40 CFR 270.30(i), as incorporated by reference at 25 Pa. Code § 270a.1(a). Inspection of any facility equipment is explicitly authorized in the permit condition. Finally, 35 P.S. § 6018.614 requires that any vehicle, equipment, or conveyance used for the transportation or disposal of hazardous waste in the commission of any crime under Act 97 (any violation of the act, or of Department regulations, orders or permits) be seized and forfeited as contraband to the Department. Obviously, seizure by law enforcement authorities would be impossible without inspection, and the right to stop and search is an assumption which underlies this provision. In sum, the Department has authority to inspect all vehicles and equipment subject to regulation under the Act. The general police power authority of the Commonwealth combined with the search authority in 35 P.S. §§ 6018.608 and 6018.609 provide comprehensive authority that extends to the limits of constitutional protections. The Department has authority to enter a facility in order to examine records, monitor, sample or test hazardous waste; ascertain compliance with regulations and permit conditions; and for other purposes set forth in the statute, regulations and permit.

For purposes of this Statement, the constitutional constraints on warrantless search do not affect the basic issue of equivalence to the Federal program. The Federal program requirements for authorization clearly cannot exceed limitations placed by current Fourth Amendment law. Therefore, to the extent that 35 P. S. § 6018.608 might found to be overly broad, it extends to the limits of constitutional restraints that constrain state and Federal governments alike. In the event that warrantless searches were invalidated, Pennsylvania would still have two mechanisms to fall back on. One is the search warrant mechanism authorized in 35 P.S. § 6018.609. The other is the landowner consent form required in 35 P.S. § 6018.502(b) as a prerequisite to issuance of a permit. (See Appendix 6) This form at the very least would be evidence that the landowner, in return for the privilege of profiting from hazardous waste management activities on his land, had waived his right to bar entry to Department inspectors. The document itself is contractual in nature. It is captioned “Contractual Consent of Landowner” and avers on the first page that it does not convey any ownership interest in the land. What it does convey to the Department is the right to enter for the purposes of inspection and for the purpose of conducting such pollution abatement or pollution prevention activities as are required under the Act, the regulations or the permit.

XII. ENFORCEMENT REMEDIES

State statutes and regulations provide the following:

A. Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(1).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(7) and (10), 6018.601, 6018.602, 6018.603, 6018.604 and 6018.610.

Remarks of the General Counsel

The order powers of the Department are addressed in 35 P.S. §§ 6018.104(7) and 6018.602. 35 P.S. § 6018.602(a) states that such orders may include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring any person to cease “unlawful activities” or operations of a solid waste facility which is in violation of any provision of the act, or the Department’s regulations, orders or permit. 35 P.S. § 6018.602(b) authorizes Department orders designed to “prevent pollution and public nuisances” where the Department finds that the storage, collection, transportation, processing, treatment or disposal of solid waste is causing pollution or creating a public nuisance. Finally, 35 P.S. § 6018.604(d) gives the Department the authority to give oral orders, as well as written orders, to suspend or modify hazardous waste treatment or disposal activities when it determines that continued operation will jeopardize public health, safety or welfare.

35 P.S. § 6018.602(a) authorizes the Department to issue an order restraining violations of regulations, permit conditions, or Act 97 by a generator, transporter, or other person managing hazardous waste, whether or not it is endangering or causing damage to public health or the environment. 35 P.S. § 6018.602(b) adds that storage, transportation, treatment and disposal activities can be addressed by order whenever they constitute a public nuisance even if there is otherwise no apparent violation. Furthermore, because 35 P.S. § 6018.601 declares all violations of statutory, regulatory and permit requirements to be nuisances per se, 35 P.S. § 6018.602(b) authorizes orders enforcing any regulatory requirement applicable to storage, transportation, treatment or disposal activities by generators, transporters and other persons and municipalities, regardless of whether they are alleged to endanger or cause damage to public health or the environment.

If there were other unauthorized activities arguably not within the ambit of 35 P.S. § 6018.602, they could be addressed by a suit to restrain the maintenance or threat of a public nuisance under 35 P.S. § 6018.604, discussed infra at B. The major difference between the Commonwealth’s order powers and 40 CFR 271.16(a)(1) is that the latter specifies that the violation endanger or cause damage to public health or the environment. Act 97 does not require this showing or allegation; the mere fact that an activity violates the statute, regulations or permit is enough to justify enforcement action by order or by lawsuit.

B. Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(2).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. (1993) §§ 6018.104(10), 6018.601, 6018.604, and 6018.610.

Remarks of the General Counsel

35 P.S. § 6018.601 contains a statutory declaration of nuisance for any violation of a provision of the Act, state regulations, orders or permit conditions. All violators covered by this provision are explicitly liable for costs of abatement caused by that violation and are also subject to any traditional common-law remedy applicable to public nuisance.

35 P.S. § 6018.604 authorizes the Commonwealth to institute equity suits for injunctions to restrain violations of the act, or the regulations, standards and orders issued thereunder, and to restrain a nuisance or threat of a public nuisance. The nuisance or threat of nuisance addressed in 35 P.S. § 6018.601 would include any violation or threatened violation of any program requirement, whether contained in permit conditions, regulations, orders or statutory provisions. One of the statutory provisions relevant to this issue is 35 P.S. § 6018.610(9), which declares it unlawful to "cause or assist in the violation of" any provision of the act, the regulations, orders or permit conditions.

Act 97 clearly authorizes suits to enjoin such violations without necessitating prior permit revocation. One basis for this conclusion is 35 P.S. § 6018.604(b) wherein municipal solicitors and county district attorneys are authorized to sue to enjoin violations of permit conditions, even though they themselves have no authority to revoke permits and might therefore be forced to sue a facility whose permit was still in effect. Moreover, 35 P.S. § 6018.604(c) describes the penalties and enforcement remedies imposed under the act as "concurrent" and declares that the existence of one remedy (e.g., permit revocation) does not prevent the Department from exercising any other remedy, at law or in equity (e.g., suits for injunctions). The cumulative nature of remedies provided in Act 97 is also emphasized by the phrase "In addition to any other remedies provided in this act," with which 35 P.S. §§ 6018.604(a) and (b) begin.

C. Authority to assess or sue to recover in court civil penalties in at least the amount of \$10,000 per day for any program violation.

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(3)(i).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. § 6018.605.

Remarks of the General Counsel

Section 6018.605 of the Solid Waste Management Act allows the Department to assess a fine of up to \$25,000 per offense. Each day of violation is considered a separate offense. The Commonwealth is more stringent than the Federal minimum of \$10,000 per day, as specified in 40 CFR 271.16(a)(3)(i).

EPA has questioned whether the definition of "person" in the Solid Waste Management Act includes "political subdivisions" and "municipalities" particularly with respect to civil penalties. Both "political subdivisions" and "municipalities" are included within the ambit of the phrase "any other legal entity whatsoever which is recognized by law as the subject of rights and duties." 35 P.S. § 6018.103, 25 Pa. Code § 260a.10. Municipalities and political subdivisions are persons under the act for all purposes including 35 P.S. § 6018.605, civil penalties.

The EPA revised civil penalty policy contained in 40 CFR 271.16(c) requires the penalty to be "appropriate to the violation." The Commonwealth applies four standards in assessing civil penalties under 35 P.S. § 6018.605: (1) willfulness of the violation, (2) damage to air, water, land or other natural resources of the Commonwealth or their uses, (3) cost of restoration or abatement, and (4) savings resulting to the violator because of the violation. The Department is also authorized to consider "other relevant factors." The civil penalty assessment, therefore, should be appropriate to the violation, consistent with 40 CFR 271.16(c) and with the requirement that the Department act in a reasonable manner in assessing a civil penalty. Black Fox Mining and Development Corporation v. DER, 1985 EHB 172.

It should be noted that neither the civil penalty limitation provisions of 35 P.S. § 6018.605(1) and (2) nor the criminal penalties limitation provision of 35 P.S. § 6018.606(i) relieve generators of program responsibilities imposed upon them. The purpose of these provisions is to relieve the generator from vicarious liability for violations or discharges committed by disposal or treatment facility operators after such facilities have properly received the generator's wastes. With the exception of recordkeeping, exception reports, and quarterly reports, the generators will have completed performance of all regulatory responsibilities by the time the wastes have been accepted at the facility and the liability for mishandling the wastes begins to shift. Since these generator responsibilities are imposed by 35 P.S. § 6018.403, and since the exemption cannot apply unless the generator has complied with that section, there are no violations of 25 Pa. Code Chapter 262a for which generators could be relieved of liability.

D. Authority to obtain criminal penalties in at least the amount of \$10,000 per day for each violation, and imprisonment for at least six months against any person who knowingly transports any hazardous waste to an unpermitted facility ; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for the purposes of program compliance.

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(3)(ii)⁵.

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. § 6018.606.

Section 1104 of Crimes Code, 18 Pa. C.S.A. 1104(c).

Remarks of the General Counsel

[Note that the used oil regulations are not being submitted with this package, and therefore, the issues regarding used oil are not addressed.]

For criminal offenses listed in 35 P.S. § 6018.606(d), the nature of the offense and the burden of proof are exactly the same as that set by Congress in § 3008 of RCRA. The maximum fine is the same in both statutes and the term of imprisonment for a third degree misdemeanor is set by Section 1104 of the Pennsylvania Crimes Code (18 Pa. C.S.A. 1104(3)) at a maximum of one year.

For storage, treatment, transportation or disposal without a permit the penalties are greater under Pennsylvania law than under RCRA, being set by 35 P. S. § 6018.606(f) at \$2,500 to \$100,000 and/or imprisonment of 2 to 10 years. Moreover, under RCRA, all criminal offenses must be committed "knowingly," whereas 35 P.S. § 6018.606(i) makes it clear that the liability for offenses under 35 P.S. § 6018.606(a), (b), (c) and (f) is absolute and no showing need be made that the crime was committed "knowingly."

XIII. PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS

State laws and regulations provide for public participation in the State enforcement process by providing:

A. Authority to allow intervention as of right in any civil or administrative action to obtain the remedies specified in Section XII A, B and C above by any citizen having an interest which is or may be adversely affected.

Federal Authority: RCRA §7004; 40 CFR 271.16(d).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. (1993) §§ 6018.615 and 6018.616.

⁵The May 3, 1993 Federal Register article (58 FR 26424) incorrectly amended 271.16(a)(3)(ii) by adding the requirements for enforcement against violators of the used oil regulations and removing the authority for obtaining criminal remedies against violators of the hazardous waste regulations. This error was corrected by the March 4, 1994 Federal Register (59 FR 10550).

Section 1921-A of the Administrative Code of 1929, Act of April 9, 1929 (P.L. 177) as amended,
71 P.S. 510-21

Administrative Agency Law, Act of November 25, 1970 (P.L. 707), as amended, §602 (2 Pa.
C.S. §702)

25 Pa. Code Chapter 1021

Remarks of the General Counsel

The three civil and administrative remedies specified in Sections XII.B & C above are suits in State courts for equitable relief and civil penalties. 35 P.S. § 6018.615 gives any citizen of the Commonwealth having an interest which is or may be adversely affected the right to intervene in any suit in state courts for equitable relief under 35 P.S. § 6018.604 and in any civil penalty actions pursuant to 35 P.S. § 6018.605.

Intervention before the EHB is granted liberally, with the EHB allowing intervention even where the intervenor would not have had standing to file the appeal itself. (Campbell et al. v DER, 1980 EHB 338). The EHB is prohibited by its own rules (25 Pa. Code § 1021.62) from denying intervention on the basis that the proposed intervenor does not have a proprietary interest affected by the action appealed, but the EHB does require that the petitioner state why his interest may be inadequately represented in the proceeding.

An additional public participation mechanism is contained in 35 P.S. § 6018.616. If a settlement is proposed in an action brought pursuant to 35 P.S. § 6018.604 (suits in equity) or 35 P.S. § 6018.605 (civil penalties), the terms of the settlement must be published in a newspaper of general circulation in the area where the violations allegedly took place at least 30 days prior to the effective date of the settlement. The publication must solicit public comments and direct them to the appropriate agency. This provision allows even those citizens who choose not to appeal or intervene to comment nevertheless on the merits of a settlement. Pennsylvania's public comment provision is broader than the corresponding Federal provision at 40 CFR 271.16(d)(2)(iii), which allows an exemption from the notice requirement if immediate action is required. Thus the Commonwealth not only grants the kind of intervention rights referred to in Alternative A, but also bestows the right of intervention and comment upon persons who arguably do not have "an interest which is or may be adversely affected."

XIV. AUTHORITY TO SHARE INFORMATION WITH EPA

State statutes and regulations provide authority for any information obtained or used in the administration of the State program to be available to EPA upon request without restriction.

Federal Authority: RCRA §3007(b); 40 CFR 271.17.

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(2) and 6018.502(c).

25 Pa. Code § 270a.82.

Remarks of the General Counsel

The general standard for availability of information submitted to the Department during the permit process is set forth in 35 P.S. § 6018.502(c) and 25 Pa. Code § 270a.82. Briefly stated, the standard is that all such information is public. The only exception to this rule is certain trade secret information which can be protected as confidential, and even this information must be shared with the "Federal Government or other State agencies as may be necessary for purposes of administration of any Federal or State law", as indicated at 35 P.S. § 6018.502(c). The regulated community is thus on notice that even if a claim of confidentiality is honored, the Department will carry out its duty to cooperate with the Federal government and to enforce 35 P.S. § 6018.502(c) by sharing that information with EPA.

XV. AUTHORITY OVER INDIAN LANDS

Federal Authority: 40 CFR 271.7(b).

Not applicable.

XVI. EXPOSURE ASSESSMENTS

A. State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. [See CERCLA §104(i).]

Federal Authority: RCRA §3019(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.104(2) and 6018.502(c).

Remarks of the General Counsel

35 P.S. § 6018.104(2) gives the Department the authority to cooperate with appropriate Federal, State, interstate and local units of government and with appropriate private organizations in carrying out its duties under the Solid Waste Management Act, including the authority to make assessment information available to the Agency for Toxic Substances and Disease Registry.

XVII. RADIOACTIVE MIXED WASTES

A. State statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504]. See State Program Advisory (SPA) #2.

Federal Authority: RCRA §§1004(27) and 3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

35 P.S. §§ 6018.102, 6018.103, 6018.104(1) & (6) and 6018.105(a).

Remarks of the General Counsel

Pennsylvania's definition of "Hazardous waste" excludes "source, special nuclear, or by-product material as defined by the U.S. Atomic Energy Act of 1954, as amended (68 Stat. 923)" as does the Federal definition. Nothing in the rest of the definition implies that the hazardous waste portion of radioactive waste is excluded from regulation. The Commonwealth's solid waste definition also has no such exclusion. Given its general statutory authorities at 35 P.S. §§ 6018.102, 6018.103, 6018.104(1), 6018.104(6) and 6018.105(a), the Commonwealth has the authority to regulate the hazardous portion of radioactive mixed waste.

XVIII. AVAILABILITY OF INFORMATION

Pennsylvania is not seeking authorization for the "Availability of Information" requirements at this time.

XIX. MEMORANDUM OF AGREEMENT (MOA)

The Department has the authority to enter into a cooperative agreement with EPA to establish procedures for the efficient administration of the hazardous waste management program. The Department is empowered by 35 P.S. §§ 6018.104(2), 6018.104(7), 6018.104(9) and 6018.104(13) to cooperate with Federal agencies and may enter into a Memorandum of Agreement in furtherance of that mandate. No applicable statute requires that the Department must adopt such procedures as regulations in order to bind itself to them.

XX. CODIFICATION OF REGULATIONS

EPA has asked the Commonwealth to discuss the codification of the regulations and, in particular, limitations upon the authority of the Commonwealth to change the text of the regulations after publication in the Pennsylvania Bulletin. Until codification in the code, the Pennsylvania Bulletin is the official text of the regulation and is "the only legal evidence of the valid and enforceable text" of the regulation. 45 Pa. C.S. § 901 (relating to official text of published documents). In preparation for codification in the Pa. Code, the Legislative Reference Bureau may prepare a revised text of a regulation in cooperation with the promulgating agency. The revised text "eliminates all obsolete, unnecessary or unauthorized material . . ." and "has been prepared in such a manner as to lend to the published code as a whole uniformity of style and clarity of expression, and which does not effect any change in the substance of the deposited text of such regulations." 45 Pa. C.S. § 723(a). Under Section 723(b), the agency may object to the revised text through written objections to the Joint Committee on Documents, which, after consultation with the agency, has the duty to make such alterations as are "necessary in order to retain the substance of the deposited text of such regulations." 45 Pa. C.S. § 723(b).

Thus, there is a statutory prohibition against substantive changes being made in codification of regulations. Further there is an administrative appeal procedure available prior to codification which allows any disputes to be resolved prior to publication, in the event that substantive revisions are made by the persons editing for codification purposes.

R.E. Grimaldi
Signature

Rick Grimaldi
Name (Type or Print)

Deputy General Counsel
Title

July 27, 2000
Date

**APPENDICES TO PENNSYLVANIA LEGAL STATEMENT
FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE
FEDERAL RCRA PROGRAM THROUGH JUNE 1998**

- Appendix 1. Statutory Construction
- Appendix 2. Authority to Adopt Regulations That Reference EPA
- Appendix 3. Authority to Adopt Interim Status Regulations
- Appendix 4. Equivalency Criteria for Surety Bonds
Equivalency Criteria for Letters of Credit
Equivalency Criteria for Cash Deposits and Certificates of Deposit
- Appendix 5. Right to Know Requests
- Appendix 6. Authority to Enter and Inspect Sites